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U.S. Office of Price Administration

Rent regulation for housing, with official...

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OFFICE OF PRICE ADMINISTRATION

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Rent Regulation FOR HOUSING

With Official Interpretations

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JUNE 1, 1943 - - WASHINGTON, D. C.

OFFICE OF PRICE ADMINISTRATION

Rent Regulation for Housing[1] With Official Interpretations

Note.—This Rent Regulation for Housing includes the provisions of all Maximum Rent Regulations, as amended, heretofore issued for housing accommodations other than hotels and rooming houses, and it is applicable to all Defense-Rental Areas for which such Maximum Rent Regulations have been issued. Any Area Rent Office may be consulted with regard to references in this regulation to Schedule A of the regulation in order to determine the State or States in which a Defense-Rental Area is located, the county or counties in the Defense-Rental Area and the maximum rent date, the effective date of regulation, and the period provided for registration in the Defense-Rental Area.

This pamphlet contains all generally applicable official interpretations of the Housing Regulation in effect on June 1, 1943. The Regulation is printed in black face type; the interpretations are so designated and are printed in light face type.

[1] The Regulation was published in the Federal Register, Vol. 8, p. 7322.

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RENT REGULATION FOR HOUSING WITH OFFICIAL INTERPRETATIONS

SECTION 1. *Scope of this regulation*—(a) *Housing and defense-rental areas to which this regulation applies.*—This regulation applies to all housing accommodations within each of the defense-rental areas and each of the portions of a defense-rental area (each of which is referred to hereinafter in this regulation as the "Defense-Rental Area"), which are listed in Schedule A of this regulation, except as provided in paragraph (b) of this section.

In Schedule A, "the maximum rent date" and "the effective date of regulation" is given for each Defense-Rental Area listed. More than one effective date is given for different portions of a Defense-Rental Area where the same effective date is not applicable to the entire Defense-Rental Area. Wherever the words "the maximum rent date" or the words "the effective date of regulation" are referred to in this regulation, the dates given in Schedule A for the particular Defense-Rental Area or portion of the Defense-Rental Area in which the housing accommodations are located shall apply. The effective date listed in Schedule A in each instance is the date rent regulation was effective in the particular Defense-Rental Area or portion of the Defense-Rental Area.

INTERPRETATION 1 (a)—I. STRUCTURES IN WHICH BUSINESS AND DWELLING USES ARE COMBINED.

Housing accommodations are defined in Section 13 (a) (6) of the Housing Regulation as "*any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property.*" A similar, though not identical, definition is contained in Section 13 (a) (6) of the Hotel Regulation.

Structures not "rented or offered for rent for living or dwelling purposes" are not subject to the Rent Regulation. Nevertheless, buildings or structures in which business and dwelling uses are combined may, under some circumstances, be subject to the Regulation.

If within the same structure there are two portions, one of which is devoted exclusively to a business or commercial use and the other of which is devoted exclusively to a living or dwelling use, the Regulation will not apply to the business or commercial portion if it is rented to a separate tenant. This is true even though, at some earlier date, the two portions were rented to one tenant, under a single lease calling for a single rent. The necessity for determining whether the business portion is regulated arises only where, on or after effective date, the two portions are rented to the same tenant.

In determinations as to the extent of control of property used for both dwelling and business purposes, two tests are to be used: First, are the business and dwelling portions separable and, second, if they are not, what is the predominant use? If the business and dwelling

portions are separable, only the dwelling portion is subject to the Regulations. If they are not separable, then either both portions are subject to the Regulation or neither is controlled. The result under such circumstances depends upon predominant use.

Separability

If the physical characteristics of the property are such that it is feasible for the tenant to remain in occupancy of the dwelling portion while some other person is using the business portion, the two portions are separable.

The business and dwelling portions are separable in either of the following cases:

(1) Where they are in separate structures.

(2) Where they are in the same structure, but

(a) There are separate means of access, and

(b) The dwelling portion is usable as a dwelling without the need for access to the business portion, and

(c) The use of the business portion does not require access to the dwelling portion, and

(d) The dwelling portion is, or can readily be, completely shut off from the business portion.

To illustrate the second situation: It is common for a structure to contain a store on the first floor and an apartment or other dwelling unit on the second floor. The entrance to the apartment is through a stairway which runs alongside, but outside, the store, so that the tenant of the dwelling has access thereto without going through the store. The store and apartment are separable and only the apartment is regulated.

Premises which do not in some particular respect comply with the specific tests of separability just stated may nevertheless be found separable where it is very clear that, by the standards and practices of the community, it is feasible for the tenant to occupy the dwelling portion while the business portion is being used by some other person.

Where the premises are separable, so that only the dwelling portion is subject to the Regulation, it will often be necessary to make an apportionment of the rent on the date determining the maximum rent in order to establish the maximum rent for the dwelling. Thus, it may be that, on maximum rent date, the landlord rented both portions to the same tenant under a single lease calling for one rent. The rent for the dwelling portion is to be established by apportionment, and the landlord, in the first instance, may make such apportionment. The apportionment must be fair and reasonable.

However, if the landlord chooses, he may, within 30 days after the effective date of the Regulation, file a petition under Section 5 (d) for a determination of the maximum rent, on the ground that it is in doubt, or in dispute or unknown. The Rent Director at any time, on his own initiative, may institute proceedings under Section 5 (d) to determine the maximum rent, on the same ground. Likewise, if the landlord makes his own apportionment, the Rent Director may review it by proceeding on his own initiative under Section 5 (d). His determination in either case will be made on the basis of how much of the total rent is fairly and reasonably to be allocated to the dwelling.

Predominant Use

If the business and dwelling portions are not separable according to the tests set out above, the two portions are to be treated as a unit for purposes of determining whether the property is subject to the Regulation. The initial test of predominant use is to be made on a space basis. If a predominant part of the space is used for business purposes, the property is not subject to the Regulation. Where less than a predominant part of the space is used for business purposes (and also where the space test cannot be used because there is no physical segregation of the space used for business purposes and that used for dwelling purposes), a second test of predominant use, in terms of rental value, is to be used. If the rental value of the business portion (or of the business use, where the two uses are not physically segregated) is clearly in excess of the rental value of the dwelling portion, the property is not subject to the Regulation; otherwise it is subject.

Thus the property as a unit is free of control by the Regulation where either (1) the predominant use, on a space basis, is for business purposes, *or* (2) the rental value of the business portion is clearly in excess of the rental value of the dwelling portion. If neither of these tests is satisfied, the property as a unit is subject to the Regulation.

It should be pointed out, however, that, if housing accommodations within the structure are sub-leased, such accommodations are subject to regulation without regard to regulation of any other part of the structure.

(Published in the form of a Regional Rent Memorandum on July 24, 1942; issued in the Interpretations series on May 15, 1943.)

Interpretation 1 (a)—II. Garages Rented by Separate Agreement.

Assume that the maximum rent date is April 1, 1941, and the effective date of the Housing Regulation is June 1, 1942.

1. On January 1, 1941, prior to the maximum rent date, L leases a house to T for one year at a monthly rent of $50. On February 1, 1941, likewise prior to the maximum rent date, L by separate agreement leases a garage on the premises to T at a monthly rent of $5. Both house and garage are being rented by T on June 1, 1942, the effective date of the Regulation.

The housing accommodations include both house and garage and the maximum rent is $55.00 a month for the two.

2. Assume in the above case that the lease of the house is made prior to the maximum rent date but that the lease of the garage is made on October 1, 1941, after the maximum rent date. Again, the housing accommodations include both house and garage. The maximum rent is $50 a month. The fact that the transaction covering the garage is by separate agreement does not free it from the Regulation. L may be entitled to an adjustment under Section 5 (a) (3) on the ground of a "substantial increase in services."

(Issued August 14, 1942.)

Interpretation 1 (a)—III. Vacant Land.

1. The X Railroad leases to T for 99 years a vacant lot on which T plans to construct a house, yard, garage, and driveway. The lot

is not subject to the Regulation while it remains vacant. However, when the dwelling has been built the land becomes subject to the Regulation. This is true even though the lease stipulates that title to the improvements is to remain in T.

2. Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942. On January 1, 1941, T rents a house and lot from L for $30 a month. On February 1, 1941, T rents from L adjoining land for extension of his yard for $10 a month. On May 1, 1942 L raises the rent for the house and lot to $40 a month and the rent for the adjoining land to $15 a month.

The adjoining land is part of the housing accommodations, and the maximum rent for the entire premises is $40 a month under Section 4 (a) of the Housing Regulation. (See Interpretation 1 (a)—II.)

3. Assume the same facts as set out in paragraph 2, except that T first rents the adjoining land on October 1, 1941.

The adjoining land is part of the housing accommodations and the maximum rent for the entire premises is $30 a month under Section 4 (a). However, L may petition for adjustment under Section 5 (a) (3) on the basis of a substantial increase in services.

(Issued October 2, 1942.)

INTERPRETATION 1 (a)—IV. CONTROL OVER PAYMENTS MADE FOR MAID SERVICE.

Assume that the maximum rent date is April 1, 1941, and the effective date of the Regulation is June 1, 1942. On April 1, 1941 an operator of an apartment house does not provide maid service for the apartments. After June 1, 1942 the operator commences to provide such service. The taking of the maid service is optional with the tenants; if a tenant chooses to take maid service the charge therefor is $5.00 a month in addition to the rent for the apartment.

This is a violation of the Regulation. Even though optional, the maid service is part of the services furnished in connection with the apartments, and money paid therefor is rent. The landlord and tenant are therefore not free to bargain for the amount to be paid for such services. The landlord's remedy is to petition for an adjustment on the basis of increased services.

In an order entered in the adjustment proceeding, the Rent Director may provide different maximum rents depending upon whether the service is furnished or not. The maximum rent without the service will of course be the rent already established, but the order should specify that this is the maximum rent without the maid service. The maximum rent with the maid service will be fixed by ascertaining the amount which would have been on April 1, 1941 the difference in rental value of the accommodations by reason of the increased services.

(Issued October 1, 1942.)

INTERPRETATION 1 (a)—V. SEPARATE OWNERSHIP OF FURNITURE.

In Section 13 (a) (6) of the Housing Regulation "housing accommodations" are defined as "*any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property.*" The following cases all involve the application of this test, in a variety of different situations.

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

1 (a). On April 1, 1941 L is operating an apartment house containing 40 units all of which are rented fully furnished at $60 a month on month-to-month tenancies. In March 1942 L sells all of the furniture in the apartments to X, who is the manager of the apartment building. Immediately thereafter the manager notifies all of the tenants that the furniture has been sold, that commencing May 1, 1942 L will rent the apartments unfurnished at $50 a month, and that the rent for the furniture will be $25 a month payable to X. After June 1, 1942 L registers the apartments, stating in the registration statements that they were changed from furnished to unfurnished on May 1, 1942, and that the first rent after the change was $50 a month; L inserts $50 a month as the maximum rent for each apartment. [See Section 4 (d) of the Housing Regulation.]

The maximum rent for each apartment is $60 a month, furnished, under Section 4 (a) of the Housing Regulation, and the apartments have been improperly registered. There was no change from furnished to unfurnished prior to June 1, 1942. Despite the change in ownership of the furniture, the furniture is "connected with the use or occupancy" of the apartments [Section 13 (a) (6) of the Housing Regulation], and under the Regulation is a part of the housing accommodations. The tenants are renting furnished accommodations, and the amounts paid for the apartments and the furniture both constitute rent for such accommodations.

(b) Assume in the foregoing case that the furniture is purchased by A, a third party who has nothing to do with the management of the apartment building. After the purchase L notifies the tenants that the apartments will be rented by him unfurnished and that any agreements with reference to the renting of the furniture must be made with A. The tenants then make separate agreements with A calling for the payment of $35 a month rent for the furniture in each apartment. When an apartment is vacated and rented to a new tenant the established practice is for the new tenant to make separate rental agreements with L and with A. When a new tenant desires a furnished apartment L advises him that he rents the apartments unfurnished for $50 a month, that the furniture in the apartment belongs to A, and that any agreement with reference to the renting of the furniture must be made with A. L does not require the tenant to rent the furniture as a condition of renting the apartment; that is, L is willing to rent the apartments unfurnished if a tenant so desires.

The maximum rent for each apartment is $60 a month, furnished. The conclusions reached in Paragraph 1 (a) apply here.

2. On April 1, 1941 L is renting an unfurnished house to X for $30 a month. On February 1, 1942 X vacates and removes his furniture. Shortly thereafter L permits the Y Furniture Company to fully furnish the house, on the understanding that, if a new tenant desires a furnished place, L will rent the house, without the furniture, for

$40 a month and the Furniture Company will rent the furniture for $25 a month. It is their further understanding that L is free to rent the house unfurnished and that, if he does so, the Furniture Company will remove the furniture. On February 15, 1942, T rents the house agreeing to pay $40 a month for the house and $25 a month for the furniture. Separate agreements are made, and L takes no part in the negotiations between T and the Furniture Company with reference to the renting of the furniture.

Under the Regulation T is renting a furnished house and the maximum rent for such house is $65 a month [Section 4 (d) of the Housing Regulation]. The furniture is connected with the use and occupancy of the house and the rent therefor is subject to the Regulation.

3 (a) On April 1, 1941 L is renting a house to X, unfurnished, for $30 a month. On February 1, 1942 X vacates leaving his furniture in the house. On February 10, 1942 the house is rented to T, who agrees to pay $35 a month for the house and $25 a month for the furniture. At the time of renting L advises T that the furniture is owned by X, that L has no interest therein but that X is willing to rent the furniture for $25 a month. A written agreement is made by which T agrees to pay $35 a month for the house, unfurnished. At the same time, by separate agreement, T agrees to pay X $25 a month for the use of the furniture. This agreement is made by L acting on behalf of X. L does not receive any part of the rent paid to X for the furniture.

For purposes of the Regulation T is renting a furnished house and the maximum rent for such house is $60 a month under Section 4 (d) of the Housing Regulation. The furniture is connected with the use and occupancy of the house and the rent therefor is subject to the Regulation.

(b) On April 1, 1941 L is renting a house to X, unfurnished, for $30 a month. On January 1, 1942, X advises L that he intends to vacate when his lease expires on February 1, 1942. On January 15, L rents the house to T, unfurnished for $35 a month, the term to commence on February 1, 1942. Later, T learns that X is leaving the city and wants to dispose of his furniture; and, on January 20, 1942, T makes an agreement with X to pay him $25 a month for the use of his furniture. L does not take part in the negotiations between T and X concerning the furniture, he receives no part of the rent paid for the furniture, and there are no other circumstances indicating a relationship between the two transactions.

Under these circumstances the renting of the furniture is not subject to the Rent Regulation. The maximum rent for the house is $30 a month, unfurnished, under Section 4 (a) of the Housing Regulation.

(c) Assume in the case stated in paragraph 3 (b) that L, knowing that X proposes to rent his furniture, makes an agreement with X by which the latter is to pay $10 a month for the privilege of keeping his furniture in the house. The furniture is part of the housing accommodations and the rent therefor is subject to the Regulation. In substance, L is receiving part of the rent paid by T to X for use of the furniture.

(d) Assume in the case stated in paragraph 3 (b) that L, knowing that X proposes to rent his furniture, requires T to rent the furniture from X as a condition of renting the house. Under these circumstances the furniture is part of the housing accommodations and the rent therefor is subject to the Regulation. This is true even though separate agreements are made, and even though L does not take part in the negotiations concerning the renting of the furniture.

(Issued December 11, 1942.)

[Sec. 1. *Scope of this regulation.*]

* * * * * * *

(b) *Housing to which this regulation does not apply.* This regulation does not apply to the following:

(1) *Farming tenants.* Housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon.

INTERPRETATION 1 (b) (1)—I. SCOPE OF FARM EXEMPTION.

Section 1 (b) (1) of the Housing Regulation exempts from the Regulation "Housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon." A similar exemption is contained in Section 1 (b) (1) of the Hotel Regulation.

For this exemption from the Regulation to apply two separate tests must be satisfied: (1) the premises must be adapted for farming operations and (2) the tenant must be actually engaged in the conduct of farming operations.

No precise tests can be formulated for determining the physical characteristics that will constitute a "farm" within the meaning of this provision. Something more is required than the location of the dwelling in a rural area, or the use of adjacent land for gardening purposes. To be equipped and adapted for farming operations the premises must ordinarily have such location, soil, and physical improvements that it is feasible to rely on their crops or produce as a principal means of livelihood.

In order to meet the requirement that the tenant be "engaged for a substantial portion of his time in farming operations thereon" it is not essential that the tenant personally engage in the physical labor of farming. It is enough if farming operations are regularly conducted under his supervision or on his behalf by members of his immediate family or by his own employees. The exemption can still apply where the tenant is gainfully employed elsewhere. However, the farming operations conducted on the premises must be substantial enough to constitute a commercial venture and not merely a means of supplementing the tenant's own food supply.

Illustration: L rents to T a five-acre tract of land on which is located a ten-room dwelling, a cement tool house, two stone and brick poultry houses, and a large barn. Until April, 1942 T and his family regularly engaged in raising poultry and vegetables for sale, the income from such sale providing the sole means of support for T and his family. In April, 1942 T secured employment at a manufacturing plant four miles away. Since that time T has ceased to spend any of his time in farming operations, but members of his family and a hired employee still raise chickens and vegetables for sale in substantially the same quantity as before April, 1942. The housing accommodations are exempt from the Regulation. It is assumed that the premises are adapted and equipped for farming

operations, and the actual conduct of such farming operations before April, 1942 is persuasive evidence to support such conclusion. The fact that T is gainfully employed elsewhere and spends no time in actual farming operations or in the supervision of others engaged in farming operations is not decisive, since substantial operations are conducted on his behalf by his employee and members of his family.

(Issued August 14, 1942.)

INTERPRETATION 1 (b) (1)—II. APPLICATION OF FARM EXEMPTION TO TENANT-EMPLOYEES.

L leases to T a farm on which ten small houses are located. In operating the farm T employs men for full-time work on the farm. Each of the ten houses is occupied by such an employee. The houses are exempt from regulation under Section 1 (b) (1), since each tenant is engaged for a substantial portion of his time in "farming operations" on the farm.

(Issued May 15, 1943.)

[Sec. 1. *Scope of this regulation.* * * * (b) *Housing to which this regulation does not apply.* This regulation does not apply to the following:]

(2) *Service employees.* Dwelling space occupied by domestic servants, caretakers, managers, or other employees to whom the space is provided as part of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part.

(3) *Rooms in hotels, rooming houses, etc.* Rooms or other housing accommodations within hotels or rooming houses, or housing accommodations which have been, with the consent of the Administrator, brought under the control of the Rent Regulation for Hotels and Rooming Houses pursuant to the provisions of that regulation.

(4) *Structures in which more than 25 rooms are rented or offered for rent.* Entire structures or premises wherein more than 25 rooms are rented or offered for rent by any lessee, sublessee or other tenant of such entire structure or premises: *Provided,* That this regulation does apply to entire structures or premises wherein 25 or less rooms are rented or offered for rent by any lessee, sublessee or other tenant of such entire structure or premises, whether or not used by the lessee, sublessee or other tenant as a hotel or rooming house: *And provided further,* That this regulation does apply to an underlying lease of any entire structure or premises which was entered into after the maximum rent date and prior to the effective date of regulation, while such lease remains in force with no power in the tenant to cancel or otherwise terminate the lease.

INTERPRETATION 1 (b) (4)—I. EXEMPTION OF UNDERLYING LEASE.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing and Hotel Regulations is July 1, 1942.

1. On September 1, 1941 L leased a 60-room hotel to T for one year at a rent of $500 a month. When this lease expired on August 31, 1942 all but five of the rooms in the hotel were rented by T to hotel guests. On September 1, 1942 a new one-year lease of the hotel structure was made between L and T, providing for a rent of $700 a month. This rent was less than the aggregate maximum rents of the hotel rooms as established under the Hotel and Rooming House Regulation. On March 1, 1943 the hotel is being operated by T, and all of the rooms are either rented or offered for rent.

Prior to March 1, 1943 the lease between L and T was subject to the Housing Regulation, and the maximum rent for the structure was established under the first paragraph of Section 5 (e) as that paragraph appeared in the regulation prior to that date. Under that paragraph L was permitted to receive the $700 a month rent. On March 1, 1943 Section 1 (b) (4) of the Housing Regulation was added by Supplementary Amendment No. 15. That provision exempts the lease between L and T from regulation, since the hotel structure contains more than 25 rooms which are rented or offered for rent by T. This exemption continues so long as the requirements of Section 1 (b) (4) are satisfied. However, the renting of the rooms by T remain subject to the Hotel and Rooming House Regulation.

2. Assume the same facts as in paragraph 1, except that the lease of the hotel structure which was in effect on March 1, 1942 expired on May 1, 1942. On the latter date a new two-year lease was made between L and T providing for a rent of $700 a month. This lease is in force on March 1, 1943. It contains no provision giving T the power to cancel or otherwise terminate.

Prior to March 1, 1943 the maximum rent for the hotel structure was established under the first paragraph of Section 5 (e) as that paragraph appeared in the regulation prior to that date [Interpretation SL—1]. Under that paragraph L was permitted to receive the $700 a month rent agreed upon in the new lease entered into on May 1, 1942. This underlying lease remains subject to the Housing Regulation, on and after March 1, 1943 until its termination, since the lease was entered into after maximum rent date and prior to the effective date of the Housing Regulation [Section 1 (b) (4), as amended by Supplementary Amendment No. 15]. The maximum rent for the hotel structure, on and after March 1, 1943, is $700 a month under Section 4 (i) of the Housing Regulation, that being the rent in effect on such date. The maximum rent is subject to decrease under Section 5 (c) (8) which was added to the Housing Regulation by Supplementary Amendment No. 15. After the lease of the hotel structure expires on April 30, 1944 the structure will no longer be subject to the rent regulations. However, the rooms in the hotel will remain subject to the Hotel and Rooming House Regulation.

3. On May 1, 1942 L completed construction of a new 60-room hotel which he leased on that date to T for a two-year term at a rent of $700 a month. The lease contains no provision giving T the power to cancel or otherwise terminate.

The maximum rent for the hotel structure is $700 a month under Section 4 (c) of the Housing Regulation. This rent may be decreased under Section 5 (c) (1). Under Section 1 (b) (4), the lease between L and T remains subject to the Housing Regulation until its expiration. After the lease expires the hotel structure will no longer be subject to the rent regulations. However, the rooms in the hotel will remain subject to the Hotel and Rooming House Regulation.

4. On September 1, 1941 L leased a 60-room hotel to T for a five-year term at a rent of $500 a month. On May 1, 1942 T sublet the entire structure to S for a two-year term at a rent of $700 a month. Prior to March 1, 1943, both the lease between L and T and the sublease between T and S were subject to the Housing Regulation. On and after March 1, 1943, so long as the conditions necessary to exemption under Section 1 (b) (¶) are satisfied, the lease between L and T is no longer subject to regulation under Section 1 (b) (4). However, the sub-lease between T and S remains subject to the Housing Regulation since, as provided in Section 1 (b) (4), it was entered into after maximum rent date and prior to the effective date of the Regulation, and is still in force. The maximum rent which T may receive from S is $500 a month, since that was the rent for the entire structure on March 1, 1942 under the lease between L and T. After March 1, 1943 T may petition for an increase in the maximum rent under Section 5 (a) (8), which was added to the Housing Regulation by Supplementary Amendment No. 15. An adjustment may be ordered if there has been a substantial increase in occupancy of the hotel since March 1, 1942.

(Issued March 1, 1943.)

INTERPRETATION 1 (b) (4)—II. WHAT ARE "ROOMS" RENTED OR OFFERED FOR RENT.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Regulation is July 1, 1942.

1. On September 1, 1941 L leased an apartment house to T for a two-year term at a rent of $150 a month. The apartment building contains four apartments, each of which has an entrance hall, living room, dining room, kitchen, two bedrooms and bath. On March 1, 1943 T is renting each of the apartments to a subtenant.

The maximum rent for the structure is $150 a month under Section 4 (a) of the Housing Regulation. The structure remains subject to the Housing Regulation on and after March 1, 1943, since it contains only 20 rooms which are rented or offered for rent by the tenant. The exemption provided by Section 1 (b) (4), as amended, applies only where the structure contains more than 25 rooms which the tenant is renting or offering for rent. Within the meaning of Section 1 (b) (4) each apartment contains five rooms. Neither the entrance hall nor the bath room is a room for purposes of that provision.

Assume that the structure in the above case contains six apartments of the sort described above, instead of four. On March 1, 1943 each of the six apartments is rented by T to a sub-tenant. On and after that date the structure is no longer subject to the Regulation, since it contains more than 25 rooms rented by the tenant. However, the apartments in the structure will remain subject to the Housing Regulation.

2. On March 1, 1943 L is renting to T a house containing 26 rooms. T is using six rooms as his own dwelling and is renting the remaining 20 rooms to roomers. The rental agreement between L and T is not exempt from the Housing Regulation under Section 1 (b) (4) since only 20 rooms are rented or offered for rent by the tenant.

(Issued March 1, 1943.)

[Sec. 1. *Scope of this regulation.* * * *

(b) *Housing to which this regulation does not apply.* This regulation does not apply to the following:]

(5) *Rented to National Housing Agency.* Housing accommodations rented to the United States acting by the National Housing Agency: *Provided, however,* That this regulation does apply to a sublease or other subrenting of such accommodations or any part thereof.

(6) *Resort housing.* Housing accommodations located in a resort community and customarily rented or occupied on a seasonal basis, which were not rented during any portion of the period beginning on November 1, 1942, and ending on March 31, 1943.

The exemption provided by this paragraph (b) (6) shall be effective only from June 1, 1943 to September 30, 1943, inclusive.

(c) *Effect of this regulation on leases and other rental agreements.* The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with this regulation.

See: Rental agreements consistent only in part with the Regulation: Interpretation 2 (c)—I, paragraphs 1 (a) and 2 (a), pp. 13, 15; Interpretation M. R. IX, paragraph 3, p. 24; Interpretation M. R. X, paragraph 2, p. 25.

(d) *Waiver of benefit void.* An agreement by the tenant to waive the benefit of any provision of this regulation is void. A tenant shall not be entitled by reason of this regulation to refuse to pay or to recover any portion of any rents due or paid for use or occupancy prior to the effective date of regulation.

See: Agreement by tenant to vacate generally invalid: Interpretation M. R. XI, paragraph 5, p. 27; Interpretation 6—V, paragraph 3, p. 73; Interpretation 6 (b) (1)—III, p. 81. Refusal of tenant to pay rent due: Interpretation 6—IV, paragraph 2, p. 71.

Sec. 2. *Prohibition against higher than maximum rents*—(a) *General prohibition.* Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for use or occupancy on and after the effective date of regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

INTERPRETATION 2 (a)—I. APPORTIONMENT OF RENT FOR PERIOD OVERLAPPING EFFECTIVE DATE.

Where rent has been paid or has become due for a weekly or monthly period beginning prior to the effective date of the Regulation, Section 2 (a) does not require an apportionment, or a refund of rent already paid, even though the effective date of the Regulation intervenes during the weekly or monthly period in question. However, for rental periods beginning on or after the effective date of the Regulation, no more than the maximum rent under the Regulation may be demanded or received.

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ILLUSTRATIONS

Assume the effective date is June 1, 1942. A rents housing accommodations to B and to C on a month-to-month tenancy. The maximum rent for each under the Regulation is $40 per month. On May 15, 1942 A receives $45 from B as rent then due for the month from May 15 to June 15. On June 15, A receives from C $45 as rent due May 15 for the month from May 15 to June 15. These two payments by the tenants may properly be received by the landlord, and no refund need be made by him to either tenant.

On May 20, A rents housing accommodations to B for one year from June 1, 1942 at a monthly rental of $45, receiving at the time of executing the lease the rent for the month of June, 1942. The maximum rent under the Regulation is $40 per month. The tenant has overpaid his June rent by $5.

(Issued May 28, 1942; first paragraph revised May 15, 1943.)

[Sec. 2. *Prohibition against higher than maximum rents.*]

(b) *Exception in case of conversion of fuel oil heating units.* Notwithstanding any other provision of this regulation, where housing accommodations are heated with fuel oil the landlord of such accommodations may as hereinafter provided enter into an agreement with the tenant providing for payment by the tenant of part or all of the cost of changing the heating unit to use some fuel other than oil or of installing a new heating unit using some fuel other than oil. Prior to making such agreement the landlord shall in writing report the terms of the proposed agreement to the area rent office. The landlord may enter into the agreement either upon its approval by the Administrator or, unless the Administrator has disapproved the proposed agreement within five days after the filing of such report, upon the expiration of such 5-day period.

(c) *Lease with option to buy.* Where a lease of housing accommodations was entered into prior to the effective date of regulation (or prior to October 20, 1942 where the effective date of regulation is prior to that date) and the tenant as a part of such lease or in connection therewith was granted an option to buy the housing accommodations which were the subject of the lease, with the further provision that some or all of the payments made under the lease should be credited toward the purchase price in the event such option is exercised, the landlord, notwithstanding any other provision of this regulation, may be authorized to receive payment made by the tenant in accordance with the provisions of such lease and in excess of the maximum rent for such housing accommodations. Such authority may be secured only by a written request of the tenant to the area rent office and shall be granted by order of the Administrator if he finds that such payments in excess of the maximum rent will not be inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. After entry of such order the landlord shall be authorized to demand, receive and retain payments provided by the lease in excess of the maximum rent for periods commencing on or after the effective date of

regulation. After entry of such order, the provisions of the lease may be enforced in accordance with law, notwithstanding any other provision of this regulation: *Provided, however,* That if at the termination of the lease the tenant shall not exercise the option to buy, the landlord may thereafter remove or evict the tenant only in accordance wih the provisions of section 6 of this regulation. Nothing in this paragraph shall be construed to authorize the landlord to demand or receive payments in excess of the maximum rent in the absence of an order of the Administrator as herein provided. Where a lease of housing accommodations has been entered into on or after the effective date of regulation (or on or after October 20, 1942 where the effective date of regulation is prior to that date), and the tenant as a part of such lease or in connection therewith has been granted an option to buy the housing accommodations which are the subject of the lease, the landlord, prior to the exercise by the tenant of the option to buy, shall not demand or receive payments in excess of the maximum rent, whether or not such lease allocates some portion or portions of the periodic payments therein provided as payments on or for the option to buy.

INTERPRETATION 2 (c)—I. APPLICATION OF SECTION 2 (c) TO LEASE-OPTION AGREEMENTS.

Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

1 (a) On April 1, 1941, the maximum rent date, L rented a house to A at a rent of $40 a month. A vacated the premises on May 31, 1941. On June 1, 1941, L entered into a written agreement with T by which L, described as owner, leased the premises in question to T, described as tenant, for a term of two years, commencing June 1, 1941. T agreed to pay L a rent of $60 a month for the two-year period. By a separate document which was executed at the same time as and in connection with the lease agreement [or by a clause which was inserted as a part of the lease agreement, as the case may be], L granted to T an option to purchase the premises described in the lease for $4800. The option agreement provided that the option could be exercised at any time during the two-year term of the lease, upon payment to L of the sum of $600 or of such sum as, taken together with the aggregate rental paid pursuant to the terms of the lease and after deducting taxes, fire insurance premiums and interest on $4800 at the rate of 6 percent, would total the sum of $600. Upon such exercise of the option by T, L agreed to execute a contract of sale to T for $4200 and T was to become obligated to pay such balance of $4200 in installments at a rate specified together with interest at 6 percent on the unpaid balance. The option agreement further provided that on default by T in any of the rent payments prior to the exercise of the option by T, L would have the right to re-enter the premises without any obligation to restore or account for payments made by T prior to such default.

The lease-option agreement above described is a rental agreement and is within the scope of the Rent Regulation. The premises must therefore be registered by L as landlord. On June 1, 1942, the effective date of the Regulation, the maximum rent becomes $40 a month. The provisions of the lease remain in force pursuant to the terms

thereof except insofar as the terms are inconsistent with the Regulation [Section 1 (c)]. Therefore, so long as T pays $40 a month, the rent to which L is entitled, T can be removed or evicted only on the grounds and in the manner provided in Section 6 of the Regulation.

Section 5 (g) of the Housing Regulation, added by Supplementary Amendment No. 8 (effective October 20, 1942), expressly provides that "no adjustment of the maximum rent shall be ordered on the ground that the landlord since the date or order determining the maximum rent, has, as a part of or in connection with a lease of housing accommodations, granted the tenant an option to buy the accommodations which are the subject of the lease." In the Reasons for Issuance which were filed with the Amendment, it was pointed out in discussing this provision that "The difficulties of valuation that such adjustments would involve present an insuperable obstacle. To determine the increase in rental value resulting from the grant of the option privilege would necessitate an appraisal of the property involved, a prediction of its value at the date when the option might be exercised, and an estimate of the contribution to rental value during the period of the lease through this contingent privilege."

Supplementary Amendment No. 8 at the same time introduced a new Section 2 (c) in the Housing Regulation, under which the tenant may request an order from the Area Rent Director authorizing the landlord to receive payments in accordance with the provisions of the lease and in excess of the maximum rent. This provision applies to leases with option to purchase, of the type here considered, which were entered into prior to October 20, 1942, the effective date of the Amendment. As a result T may, after October 20, file a written request to the Area Rent Director and an order can be entered authorizing L to receive $60 a month thereafter until the expiration of the lease. The effect of the order, if and when entered, will be to authorize L thereafter to enforce the provisions of the lease-option agreement, even to the extent of evicting T for non-payment of the amounts provided in the lease in excess of the maximum rent. After entry of such order L can likewise compel T to make the payments called for by the agreement for the period between the effective date of the Regulation and the entry of the order and amounts already received by L in accordance with the lease-option agreement, even though in excess of the maximum rent, may be retained by him.

If an order is not entered on T's written request, as provided in Section 2 (c), the demand or receipt by L of more than the maximum rent of $40 a month would constitute a violation of the Regulation. Since the provisions of the lease remain in force except insofar as its terms are inconsistent with the Regulation, the option remains in force and may be exercised by tender of the amount called for by the agreement, within the time limits therein fixed. T can therefore withhold the amounts called for by the original agreement in excess of the maximum rent, and pay the aggregate of such amounts to L at whatever time, within the time provided by the agreement, that T elects to exercise the option. The contract which would result from the exercise of the option is assumed to be in good faith and not to constitute an attempt to evade the Rent Regulation. Since payments made on the contract would not, on this assumption, constitute rent payments or involve a violation of the Regulation, T can on the exercise of the option add whatever sum may be needed to make up the $600 total

required by the option agreement at the time the option is exercised. Since T is himself in occupancy of the accommodations it is, of course, not necessary to comply with the requirement of ⅓ payment of the purchase price provided in Supplementary Amendment No. 7, amending Section 6 (a) (6) and Section 6 (b) of the Housing Regulation.

(b) Assume the facts of paragraph 1 (a) except that the agreement of L and T on May 31, 1941 required that T pay $240 down at the time the lease and option agreement were executed. Since the down payment is a payment for use and occupancy during the two-year term of the lease, it is to be spread equally over that period at the rate of $10 a month. Therefore, as of June 1, 1942, the effective date of the Regulation, T has paid in advance $10 a month for the 12 months remaining of the term. For the balance of the term or until T exercises his option to purchase, L is entitled to demand and receive $30 a month as rent. [See Interpretation M. R.—IX, No. 1].

2 (a). On April 1, 1941, the maximum rent date, a house owned by L is rented to A at a rent of $40 a month. On August 1, 1942, two months after the effective date of the Regulation, L enters into a written agreement with T for a two-year lease, starting August 1, 1942. The rent stipulated is $60 a month. By a separate document which was executed at the same time as and in connection with the lease agreement [or by a clause which was inserted as a part of the lease agreement, as the case may be], L granted to T an option to purchase the premises described in the lease for $4800, with terms and conditions for the exercise of the option the same as those described above in paragraph 1 (a).

The lease-option agreement is a rental agreement and should be analyzed in the manner set forth in paragraph 1 (a). Since the maximum rent is $40 a month, the demand and receipt by L, after the effective date of the Regulation, of more than that amount constitutes a violation of the Regulation. Although the lease was entered into after the effective date of the Regulation, it is probably not invalid as a whole but only insofar as the rent stipulated exceeds the maximum rent [Section 1 (c)].

So long as T continues to pay L $40 a month, the rent to which L is entitled, T can be removed or evicted only on the grounds and in the manner provided by Section 6 of the Regulation. Since the lease-option agreement is probably invalidated only to the extent that it is inconsistent with the Regulation, T can withhold the difference between the rent provided in the agreement and the maximum rent, and pay the sums so accumulated to L in a lump sum if and when he elects to exercise the option.

Since the lease-option agreement was entered into prior to October 20, 1942, T may in writing request the Area Rent Director to enter an order authorizing L to demand and receive $60 a month, the amount stipulated in the agreement. The entry of the order will have the effects described above in paragraph 1 (a), as to L's right to demand and receive payments provided for the period between the date of the agreement (which in this case is subsequent to the effective date of the Regulation) and the entry of the order. Although the lease agreement is invalidated by the Regulation, to the extent that it is inconsistent with the Regulation in providing for payments in excess of the maximum rent, the entry of an order of the Area Rent Director will authorize payments to be made up to

the limits provided in the agreement and will exempt such payments from the prohibitions of the Regulation. Since the agreement was made after the effective date of the Regulation, the circumstances should be carefully examined and an order under Section 2 (c) refused if an intent to violate the provisions of the Regulation is found to have existed on the part of L.

(b) Assume the facts of paragraph 2 (a) except that the agreement of L and T on August 1, 1942 provided for payment by T of $240 down at the time the lease and option agreement were executed. The down payment is a rent payment and the provision requiring such down payment is invalidated by the Regulation since it substantially increases the burden of the rent payments. [See Interpretation M. R.—IX, No. 3.] If an order is entered on written request of T, in accordance with the provisions of Section 2 (c), the provision for the $240 down payment would, however, become enforceable.

3. Assume that the agreement described in paragraph 2 (a) was entered into by L and T on October 25, 1942, after the effective date of Supplementary Amendment No. 8 to the Housing Regulation. Section 2 (c), which was added by that Amendment, is expressly limited to leases with option to purchase which were entered into prior to October 20, the effective date of the Amendment. Therefore, no order authorizing L to demand and receive more than $40, the amount of the maximum rent, is permitted by Section 2 (c). Furthermore, Section 5 (g) expressly excludes any adjustment on the ground that T has been granted an option to buy the accommodations as part of or in connection with the lease.

The inclusion of an option to buy does not in any way invalidate the lease. Since the lease-option agreement is invalidated only to the extent that it is inconsistent with the Regulation, T can withhold the difference between $60, the rent provided in the agreement, and $40 a month, the amount of the maximum rent, and pay the sums so accumulated to L in a lump sum if and when he elects to exercise the option.

Even though the agreement between L and T, which is entered into after October 20, 1942, expressly allocates the excess over the maximum rent as payment on or for the option to buy, L will not be entitled to demand and receive more than $40 a month, the maximum rent for the accommodations. This results from the express language of Section 2 (c), to the effect that "Where a lease of housing accommodations has been entered into on or after October 20, 1942, and the tenant as a part of such lease or in connection therewith has been granted an option to buy the housing accommodations which are the subject of the lease, the landlord, prior to the exercise by the tenant of the option to buy, shall not demand or receive payments in excess of the maximum rent, whether or not such lease allocates some portion or portions of the periodic payments therein provided as payments on or for the option to buy."

4 (a). On January 1, 1941, three months prior to the maximum rent date, L and A executed a lease-option agreement which provided a rent of $60 a month and a term of two years, and gave A an option to buy the premises at any time during the term of the lease for $4800, with rent payments credited on the contract price in the manner described above in paragraph 1 (a). This lease-option

agreement was in force on April 1, 1941, the maximum rent date. The payment due on January 1, 1942, was not made by A and in accordance with the provisions of the lease L re-entered for default in payment and declared all prior payments made by A to be forfeited. On February 1, 1942 L leased the premises to T for six months, without option to purchase, at a monthly rent of $40 a month. T was in occupancy under this lease on June 1, 1942, the effective date of the Regulation.

The maximum rent is $60 a month. However, by the express provisions of Section 5 (g) (added by Supplementary Amendment No. 8, effective October 20, 1942) the Rent Director may enter an order fixing the maximum rent on the basis of the rents for comparable housing accommodations on the maximum rent date.

5. Housing accommodations newly constructed with priority rating are first rented by L to T on August 15, 1942 at a monthly rent of $50 a month, the rent approved by W. P. B. The lease provides a term of one year and contains a provision giving T an option to buy the premises at any time during the term at a price of $2600, all rent payments, after deduction of taxes, insurance and interest on $2600 at 5 per cent, to be credited on the contract price in the event the option is exercised.

The maximum rent is $50 a month, as provided in Section 4 (f). The inclusion of an option to buy among the privileges granted to T by the lease does not in any way invalidate the lease agreement.

(Issued October 20, 1942.)

Sec. 3 ***Minimum services, furniture, furnishing and equipment.*** **Except as set forth in section 5 (b), every landlord shall, as a minimum, provide with housing accommodations the same essential services, furniture, furnishings, and equipment as those provided on the date determining the maximum rent, and as to other services, furniture, furnishings and equipment not substantially less than those provided on such date:** ***Provided, however,*** **That where fuel oil is used to supply heat or hot water for housing accommodations, and the landlord provided heat or hot water on the date determining the maximum rent, the heat and hot water which the landlord is required to supply shall not be in excess of the amount which he can supply under any statute, regulation or order of the United States or any agency thereof which rations or limits the use of fuel oil.**

Sec. 4 ***Maximum rents.*** **Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:**

NOTE.—Section 4 is the section of the Regulation which provides the methods by which maximum rents are determined. Before the analysis of specific paragraphs of Section 4, there is inserted a series of Interpretations dealing with the general subject of the meaning of "rent" under the Maximum Rent Regulations. These Interpretations are cited as M. R. (Maximum Rent) Interpretations, with Roman numerals in the same form as is used for Interpretations dealing with specific paragraphs.

INTERPRETATION M. R.—I. PROVISIONS FOR VARIABLE RENT.

1. A written lease of a hotel structure, in effect on the maximum rent date, provides for rent based on a percentage of the gross receipts from the operation of the hotel by the tenant. On April 1, 1941, the

maximum rent date, the rent payable for the month in which the maximum rent date falls amounts to $150.00. Under the same lease the average monthly rent for 1941 amounts to $450.00.

Section 4 does not require that the rent be a definite amount in dollars. In a case where on the maximum rent date the tenant of a hotel structure or of a rooming house was obligated under a lease then in effect to pay a percentage of the gross receipts from the business conducted by the tenant in the structure, while that percentage cannot be increased, the actual dollar amount paid by the tenant to the landlord may fluctuate. This rental provision in the lease, if it was in effect on the maximum rent date, establishes the maximum rent.

2. Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On April 1, 1941, L leases an apartment to T for one year at a monthly rent of $25, the lease providing that in the event T pays his rent on or before the 10th day of a particular month, he shall be entitled to a discount of ten per cent for that month (or that he need pay only $22.50 as rent for that month).

The rent to be paid for the monthly period which includes the maximum rent date is $25, or if payment is made on or before the 10th of that month, $22.50. This rental provision, in effect on the maximum rent date and covering the rental period which includes the maximum rent date, establishes the maximum rent for the dwelling unit. L may continue after June 1, 1942, the effective date, to charge $25 for any month in which the rent is not paid on or before the 10th, but if payment is made on or before the 10th of the month, L may charge only $22.50. This would be true whether the particular dwelling unit is occupied on the effective date by the same tenant as on the maximum rent date or by some other tenant.

3. Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On April 1, 1941, L leases an apartment to T at a monthly rent of $45, the lease providing that T shall have the right to sublease and that upon subleasing the rent shall be increased at the rate of $2.50 for each subtenant, the increase to apply for that month or months during which the subtenant or subtenants are in occupancy.

The rent to be paid for the monthly period which includes the maximum rent date is $45 plus $2.50 for each subtenant occupying the apartment during that month. This rental provision, in effect on the maximum rent date, establishes the maximum rent. L may continue after June 1, 1942, the effective date, to charge $45 plus $2.50 for each subtenant occupying the apartment during the particular month or months in question.

(Issued July 7, 1942; revised May 15, 1943.)

Interpretation M. R.—II. Provisions for Penalties or for Payment of Attorneys' Fees on Default.

1 (a). On April 1, 1941, the maximum rent date, L leased a house to T for one year at a monthly rent of $25.00, the lease providing that in the event T failed to pay the rent by the 10th of any month he should pay an additional 10%. The lease expired on April 1, 1942 and was renewed on the same terms.

The maximum rent is $25 a month, or, if the tenant fails to pay by the 10th of the month, $27.50 a month.

(b) On April 1, 1941, the maximum rent date, L leased a house to T for one year at a monthly rent of $25.00, with no provision in the lease for an additional payment in the event T failed to pay promptly. The lease was renewed on April 1, 1942 on the same terms, except that a provision such as that described in paragraph (a) was inserted. The provision is invalid since it may result in payment of more than the maximum rent.

On the other hand, if the rent stipulated in the lease when it was renewed on April 1, 1942 was $20, the additional payment of 10% does not result in payment of more than the maximum rent of $25, and the provision is not prohibited by the Regulation.

2. The lease in effect on April 1, 1941, the maximum rent date, provided for a rent of $25 a month and contained the following clause:

> In the event of the employment of an attorney by the lessor on account of the violation of any of the conditions of this lease, the lessee hereby agrees to pay a reasonable attorney's fee.

The lease which is now in force provides the same rent and contains a similar clause. The tenant defaults in payment of rent and the landlord employs an attorney to make collection. The question arises whether the agreement to pay an attorney's fee is enforceable under the Regulation.

The payment of the attorney's fee is a payment of rent. Since the agreement was contained in the lease in effect on April 1, 1941, it is not prohibited by the Regulation, and its validity is a matter of local law.

On the other hand, if the lease in effect on April 1, 1941 contained no such provision, but such a provision is contained in the present lease, it is prohibited by the Regulation since it may require the payment of rent in excess of the maximum rent.

(Issued August 7, 1942.)

Interpretation M. R.—III. Rent Including Value of Interest in Land Conveyed Under Agreement for Mortgagor's Occupancy.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

On January 10, 1941 an action was commenced by A to foreclose a mortgage executed by B as mortgagor. On January 20, 1941 A and B entered into a written contract by which B executed a deed of his interest in the mortgaged property and A agreed to allow B to occupy the premises at a rent of $2 a month (or for no cash rent whatever). B was in occupancy under this agreement on the maximum rent date.

The rent on the maximum rent date includes both the dollar amount, if any, and the value of the deed given by the mortgagor in consideration of the agreement to permit him to occupy the premises. There is therefore a doubtful or unknown fact necessary to the determination of the maximum rent within the provisions of Section 5 (d). If the amount of the maximum rent cannot be determined by ascertaining the value of the deed given by B, Section 5 (d) directs

that the rent shall be fixed on the basis of the rents for comparable housing accommodations. The maximum rent fixed by the Rent Director in his order under Section 5 (d) is the maximum rent from the effective date of the Regulation, even though the order is entered some time after that date.

If A chooses, he may in the first instance make his own determination as to what the rent was on the maximum rent date, based on the value of the deed and its allocation over the period of occupancy. However, this involves some risks since the Rent Director may subsequently initiate proceedings under Section 5 (d) and find that the amount fixed by the landlord was too high. In that event, since the order under Section 5 (d) fixes the maximum rent from the effective date of the Regulation, the demand or receipt of the excess probably constitutes a violation of the Regulation.

(Issued August 14, 1942.)

INTERPRETATION M. R.—IV. OBLIGATION OF TENANT TO REPAIR OR TO PAY FOR REPAIRS.

Assume that the maximum rent date is March 1, 1942 and the effective date of the Regulation is July 1, 1942.

1. The lease in force between L and T on March 1, 1942 provides for $40 a month rent. L is obligated to keep the premises in ordinary repair. When the lease is renewed on July 1, 1942 T agrees to pay $40 a month and to repair defective plumbing and paint the exterior of the house.

The maximum rent is $40 a month. L cannot enforce T's obligation to repair the plumbing and paint the house.

2. The lease in force between L and T on March 1, 1942 provides for $40 a month rent. L is obligated to keep the premises in ordinary repair. When the lease is renewed on July 1, 1942 for a term of a year, L and T agree that L will paint and repaper the interior with expensive materials selected by T and that L will erect partitions in two rooms according to T's specifications. In consideration of this agreement by L, T promises to pay $50 a month for the duration of the lease.

The maximum rent is $40 a month. The additional agreement to pay the $10 a month is an agreement to pay rent and is unenforceable. L's remedy is to petition for an adjustment if the increase in services is substantial.

3. On November 1, 1941 L leased a house to T for six months, T agreeing to perform the repairs and to maintain the property for the period of the lease and pay a monthly rent of $25. On May 1, 1942, L rents the accommodations to T for six months from that date at a monthly rent of $30, L agreeing to perform all needed repairs and to maintain the property for the period of the lease.

The rent on March 1, 1942 is $25 and accordingly on July 1, 1942, L must reduce the rent to that amount. However, as the term "services" includes repair and maintenance [Section 13 (a) (7)], if there has been a substantial increase in these services since March 1, 1942, the date determining the maximum rent, the landlord may petition for adjustment. [Section 5 (a) (3)]

(Issued August 20, 1942.)

INTERPRETATION M. R.—V. CASH RENT PLUS OBLIGATION TO SUPPLY MATERIALS OR SERVICES.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Regulation is July 1, 1942.

1. On May 1, 1941 L leased a house to T for one year at a rent of $40 a month. In the written lease executed at the time by L and T, T agreed during the term of the lease to construct a garage at the rear of the premises and also to install a bathroom on the first floor of the house. On April 30, 1942 T vacated and the accommodations were rented to a new tenant.

The maximum rent includes both the cash payment of $40 a month and the value of the improvements which T agreed to make. Since the value of the improvements is in doubt a proceeding may be brought under Section 5 (d) to ascertain facts necessary to the determination of the maximum rent. The determination made in such a proceeding will establish the maximum rent from the effective date of the Regulation.

2. On May 1, 1941 L leased a house to T for one year at a rent of $40 a month. In the written lease executed at the time by L and T, T obligated himself to perform all necessary repairs to the premises during the term of the lease. On April 30, 1942 T vacated and L rented the house to another tenant with an agreement by which L assumed the obligation to make necessary repairs.

The maximum rent is $40 a month. However, as the term "services" includes repair and maintenance, if there has been a substantial increase in these services since March 1, 1942, the landlord may petition for an adjustment.

Even though the assumption of a duty to make repairs was expressed in the lease between L and T as an enforceable obligation of T, the lease should not be analyzed as including repairs and maintenance in the rent clause. The assumption of repairs and maintenance by the tenant constitutes merely a transfer to him of one of the ordinary and continuing services connected with housing accommodations. Furthermore, the Regulations specifically contemplate adjustments in the maximum rent where repairs and maintenance are shifted from tenant to landlord and vice versa. [See Section 5 (a) (3).]

3. On March 1, 1942, the maximum rent date, a house is leased by L to T with the agreement that T shall pay as rent the sum of $15 per month in cash and that in addition T shall supply $15 worth of labor each month, the labor to consist in carpentry work on nearby properties.

The maximum rent for the leased premises is $30 per month. Rent may consist of something besides money and may be payable in the form of labor. Under Section 4 (a) the rent for the housing accommodations on March 1, 1942, is fixed as the maximum rent. Both the landlord and the tenant agreed that the monetary value of the labor to be furnished was $15 and that the total rent on March 1, 1942, in monetary terms, was $30 per month. The maximum rent, therefore, is fixed at that amount. However, if there is doubt as to whether the valuation placed by the parties on T's services represents the actual understanding of the parties, a proceeding under Section 5 (d) would be appropriate to determine the value of the performance bargained for between L and T.

4. On May 1, 1941 L leased a house to T for a term of one year at a rent of $40 a month. In the written lease executed by L and T it was provided that during the term of the lease T would paint and repaper all rooms and hallways in the house, would refinish the floors, and repair defective water pipes in the basement. The lease further provided that T would spend a total of $250 on these specified improvements. On April 30, 1942 T vacated and the premises were rented to a new tenant.

The maximum rent includes both the cash rent and the value of the improvements which T was obligated to make during the term of the lease. This case differs from the case discussed in paragraph 2 above, in that the character of the work to be done by T was so far particularized and was sufficiently substantial to indicate that in fact this performance by T was intended as part of the consideration supplied by him. The fact that the cost of the work was specified also supports the conclusion that L and T contemplated the assumption by T of an obligation differing from a generalized and continuing obligation to repair and maintain the accommodations. On the facts stated, however, the same result would be reached even though the cost of the work was not specified.

(Issued December 2, 1942.)

INTERPRETATION M. R.—VI. TENANT'S PAYMENT ON EXERCISE OF PRIVILEGE OF CANCELLATION.

Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On March 1, 1941 L rented a house to T for one year under a written lease which provided a rent of $50 a month and which did not authorize cancellation at the election of T. On March 1, 1942 this lease was renewed at the same rent but with a clause which gave T the privilege of cancelling the lease on one month's notice, provided T paid one-half month's rent at the time the privilege was exercised. On July 1, 1942 T notified L of his election to cancel the lease, the cancellation to be effective August 1, 1942.

L may enforce the provision requiring payment of one-half month's rent on T's exercise of the privilege of cancellation. This payment is not rent paid "for the use or occupancy of housing accommodations" within the definition in Section 13 (a) (10) of the Rent Regulation for Housing. The payment is due for the exercise of a privilege to terminate use and occupancy, and is made contingent on the tenant's election to exercise the privilege. Provided the amount due bears some reasonable relationship to the losses incurred by the landlord through the premature termination of the lease, the clause constitutes an attempt to substitute a pre-determined amount for the damages to which the tenant would otherwise be liable.

The same result would be reached if the clause in question were newly inserted after the effective date of the Regulation. In that case, however, it would be important that the amount due be shown to approximate the losses actually incurred through the premature termination of the lease. A provision for an excessive payment or other surrounding circumstances might lead to the conclusion that the landlord was in fact exacting payment "for use or occupancy

of housing accommodations" through a substantial addition to the burdens of the tenancy.

If the amount stipulated for the privilege of cancellation was payable unconditionally in advance and was not made contingent on the lessee's subsequent exercise of the privilege of cancellation, the payment would constitute rent within the meaning of the Regulation. Furthermore, if the parties clearly understood and intended some specific term shorter than a year, and adopted the form of a year's lease with a clause providing for payment if the tenant exercised a privilege of cancellation, the arrangement would constitute an attempt to exact an additional payment for the term of occupancy which was so understood and intended, and would therefore constitute an evasion of the Regulation.

(Issued August 5, 1942.)

INTERPRETATION M. R.—VII. VARIATIONS IN RENT BECAUSE OF VARIATIONS IN LENGTH OF TERM.

Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

L, the owner of a large apartment building, has an established practice of renting apartments on a yearly basis and of charging a higher rent to tenants who take leases for less than a year. On April 1, 1941, the maximum rent date, an apartment in the building was under lease to A, under a written lease for one year which provided for a rent of $55 a month. Similar apartments in the same building were rented to other tenants at rents of $60 a month in cases where such tenants had taken leases for three-month terms. On May 1, 1942 L executed a written lease for three months to B of the apartment rented to A on April 1, 1941, the lease to B providing a rent of $65.

The maximum rent of the apartment is $55. The Housing Regulation, unlike the Hotel and Rooming House Regulation, does not authorize variations in rents because of variations in the terms of occupancy.

Conversely, an apartment rented on the maximum rent date for a rent of $60 a month, to a tenant who had entered into a lease for a shorter term such as three months, would continue to have a maximum rent of $60 a month, even though now leased to a tenant under a year's lease.

(Issued August 8, 1942.)

INTERPRETATION M. R.—VIII. ACCELERATED PAYMENTS AFTER EFFECTIVE DATE.

Assume the maximum rent date is March 1, 1942 and the effective date of the Regulation is June 1, 1942.

On July 1, 1941 L rented an apartment to A under a written lease for one year, at a rent of $50 a month. On July 1, 1942 L entered into a new lease with B for six months, the lease providing a rent of $60 a month for the first three months and $40 a month for the second three months.

The maximum rent for the accommodations is $50 a month. Although the rent clause of the lease entered into on July 1, 1942 would not produce total payments exceeding an average rate of $50 a month

for the whole six months' term, the rent for periods after the effective date of the Regulation cannot exceed the maximum rent.

If a similar provision for varying rents during the term of the lease had been in effect on the maximum rent date, an adjustment would be authorized either by Section 5 (a) (6) or by 5 (c) (5), depending on whether an upward or downward adjustment of the maximum rent was required.

(Issued August 20, 1942.)

INTERPRETATION M. R.—IX. PREPAYMENT OF RENT.

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

(1) On April 1, 1941, a house is rented to T for $50 a month. A new one-year lease is made on April 1, 1942 under which T pays $240 down at the commencement of the lease and agrees to pay $40 a month.

The maximum rent is $50 a month. The down payment was payment for use and occupancy during the period of the lease and is to be spread equally over that period at the rate of $20 a month. As of June 1, 1942, therefore, T has paid in advance $20 a month for each of the ten months remaining in the term. For the balance of the term L is entitled to demand and receive $30 a month.

(2) On January 1, 1941 L and T enter into a one-year lease under which T pays $240 down at the commencement of the lease and agrees to pay $40 a month.

The maximum rent is $60 a month. The down payment is payment for use and occupancy during the period of the lease and is to be spread equally over the monthly payments at the rate of $20 a month. Thus the monthly rent on April 1, 1941 was $40, the amount due at that time, plus $20, the amount paid in advance for that month.

(3) Assume that the maximum rent for a house is $60 a month. On August 1, 1942 L and T enter into a one-year lease under which T agrees to pay $240 down and $40 a month. The down payment is a rent payment, and the provision requiring such down payment is invalidated by the Regulation since it substantially increases the burden of the rent payments. Since the total payments provided during the term of the lease average $60 a month, which is the amount of the maximum rent, the lease remains in force if it can be construed to provide for payments of $60 a month in view of the invalidity of the down payment provision [Section 1 (c)].

(Issued September 8, 1942.)

INTERPRETATION M. R.—X. SECURITY DEPOSITS AND PREPAYMENT OF LAST MONTH'S RENT.

Assume in each case that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

1. On April 1, 1941, the maximum rent date, L rents a house to T as a tenant from month to month at a rental of $40 per month. No deposit of any kind is required from T. On June 1, 1942, L demands from T, or from a succeeding tenant, a deposit of $15 to be returned upon the termination of the tenancy, provided that no obligation of the tenancy has been violated.

The demand or receipt of the $15 deposit constitutes a violation of the Regulation. The furnishing by T of such deposit, even though the money is to be returned upon performance of the obligations of the tenancy, constitutes part of the consideration demanded or received for the use of the leased premises and as such constitutes rent. This is the case even though interest is paid by L on the deposit.

Where, however, a deposit of the same amount was required on the maximum rent date, there has been no increase in the rent and no violation of the Regulation.

2. On March 1, 1941 L leases a house to T for a term of one year, at a rental of $40 a month payable on the first of each month for occupancy during that month. On July 1, 1942 L executes to T or to a succeeding tenant a new lease of the house at a rental of $40 a month, with the additional requirement that the last month's rent shall be paid on July 1, 1942, together with the rent payable for the month of July.

The demand or receipt of $40 payment for the rent of the last month of the term constitutes a violation of the Regulation, and the provision requiring such advance payment is invalid. The payment constitutes part of the consideration demanded or received for use and occupancy of the premises. Since the rent stipulated does not exceed the maximum rent of $40 a month, the lease remains in force if it can be construed to provide for payments of $40 a month in the light of the invalidity of the provision for pre-payment of the last month's rent. [See Interpretation M. R. IX, #3].

Where, however, a pre-payment of the last month's rent was required in a lease which was in force on the maximum rent date, a provision for such pre-paymnt is valid.

(Issued September 12, 1942.)

INTERPRETATION M. R.—XI. OBLIGATION CALLING FOR INCREASED RENT WHEN AUTHORIZED BY REGULATION OR AFTER TERMINATION OF RENT CONTROL.

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

1. On April 1, 1941 a house is rented to T for $50 a month. The lease expires on August 1, 1941 and a new lease for one year is made with T, providing for a rent of $60 a month. On June 1, 1942, in compliance with the Regulation, L reduces the rent to $50 a month. On July 15, 1942 L tenders to T and demands that he sign a one-year lease, on the same terms as the lease which will expire July 31, 1942, except that it provides for a rent of $50 a month and contains the following clause:

> Lessee has been advised and understands that the rent for the premises described herein was $60 a month prior to July 1, 1942, and has been reduced to $50 a month, the amount set out in this lease, by reason of an order of the Federal Price Administrator and Mandatory Maximum Rent Regulations issued by him effective July 1, 1942.
>
> Lessee hereby covenants and agrees that in the event, during the continuance of this lease, for any cause whatsoever, it shall become lawful for Lessor to reestablish the rent of $60 a month, the rental to be paid by Lessee to Lessor shall automatically become $60 a month for the balance of the period covered by this lease.

T refuses to sign the lease, and L brings action to evict under Section 6 (a) (1).

Two issues are presented: First, is the clause quoted above valid and, second, if it is, is the new lease on the "same terms and conditions" as the expiring lease within the meaning of Section 6 (a) (1).

The clause is valid, and the lease is on the "same terms and conditions." Thus Section 6 does not prohibit eviction of T. The clause does not call for a higher rent than the maximum rent, nor than the rent fixed in the expiring lease.

2. Assume in the case stated in paragraph 1 that L tenders a new lease to T providing for a rent of $50 a month and containing the following clause:

> It is understood by the lessee that the rent of $50 a month which is provided herein is the present maximum legal rent permitted under the Maximum Rent Regulations issued by the Office of Price Administration. Lessee hereby agrees that, in the event the maximum legal rent for the premises described herein is increased, the rent to be paid by the lessee shall automatically increase to the same amount.

T refuses to sign the lease and L brings action to evict under Section 6 (a) (1).

The foregoing clause is valid since it does not call for more than the maximum rent. However, because of its presence, the new lease is not on the "same terms and conditions" as the expiring lease and thus T's refusal to sign the new lease is not a ground for eviction under Section 6 (a) (1). The old lease called for a rent of $60 a month, while the new lease calls for a rent which may exceed that amount since it is conceivable that the present maximum rent of $50 a month may at some future time be increased to more than $60 a month. The clause set out in paragraph 1 is distinguishable in that it does not call for a rent above $60 a month, even though the maximum rent might be increased above that figure.

3. Assume in the case stated in paragraph 1 that L tenders a new lease to T providing for $50 a month rent and containing the following clause:

> The Landlord, or its Agents, shall have the right at any time during the term hereof to increase the stipulated rental herein set forth provided such rental increase is permitted under the provisions of The Emergency Price Control Act of 1942 and is permitted under the Rules and Regulations of the Price Administrator of the United States Government relating to such act and any amendments thereto, or provided that such act and Rules and Regulations shall be repealed or abolished. In the event the Landlord increases the rent as hereinabove provided, the Tenant herein agrees to pay the rental as determined and fixed by the Landlord.

T refuses to sign the lease and L seeks to evict under Section 6 (a) (1).

The clause is invalid and T's refusal to sign the lease is not a ground for eviction. The clause purports to obligate T to pay such increased amount as L may demand, after the expiration of rent control. This could be used as a means of obtaining, after rent control, rent which was in fact consideration for use and occupancy during rent control. Thus, on expiration of rent control, L might increase the rent to $300 a month. This would be, in fact, an attempt to collect rent for use and occupancy during the period of rent control. True, such an increase might not bind the tenant under local law, despite his stated obligation to pay whatever rent the landlord demanded; however, no inquiry into the effect of local law is required since the clause is invalid under the Regulation. The Regulation does not permit the landlord to make an agreement with the tenant for payment of an amount after termination of rent control which in fact is payment for use and occupancy during the period of rent control.

The same result would follow if the lease obligated the tenant to pay a fixed rent after the expiration of rent control which was excessive. Again, the inference would be clear that this rent was intended in part as payment for use and occupancy during rent control.

4. Assume in the case stated in paragraph 1 that L tenders a new lease for one year to T providing for $50 a month rent and authorizing either party to cancel the lease by written notice to the other party given within 30 days after termination of rent control either through expiration or repeal of the Emergency Price Control Act of 1942 or through the invalidity of the Act or of the Regulations issued thereunder. T refuses to sign the lease and L seeks to evict under Section 6 (a) (1).

The clause is valid, since it does not purport to bind T for more than the present maximum rent and merely authorizes cancellation of the existing lease with opportunity to negotiate new terms on expiration of rent control. However, because of the presence of this clause, the new lease is not on the "same terms and conditions" as the expiring lease, which is assumed to have contained no similar cancellation clause; thus T's refusal to sign the lease is not a ground for eviction under Section 6 (a) (1).

5. Assume in the case stated in paragraph 1 that L tenders a new lease for one year to T, providing for $50 a month rent and containing the following clause:

> The Landlord, or its Agents, shall have the right at any time during the term hereof to increase the stipulated rental herein set forth provided such rental increase is permitted under the provisions of the Emergency Price Control Act (Public Law #421) and is permitted under the Rules and Regulations of the Price Administrator of the United States Government relating to such act and any amendments thereto, or provided that such act and Rules and Regulations shall be repealed or abolished. In the event the Landlord increases the rent as hereinabove provided, the Tenant herein agrees to pay the rental as determined and fixed by the Landlord. The Tenant, in the event of his unwillingness to pay the rent as increased agrees to vacate and surrender the premises within thirty days after the mailing by the Landlord to the Tenant of a written notice of such increase and further agrees to pay the original stipulated monthly rental for such thirty-day period. The mailing of such notice of increase in rent by the Landlord to the Tenant addressed to the Tenant at the demised premises shall be considered by both parties hereto as full and complete notice. In the event of the failure of the Tenant to pay the rental as increased, and/or vacate and surrender said premises, the Landlord lawfully may enter upon said premises and repossess the same.

T refuses to sign the lease and L seeks to evict under Section 6 (a) (1).

The foregoing clause contains an ambiguity which may make it invalid. The second sentence provides that "In the event the Landlord increases the rent as hereinabove provided, the Tenant herein agrees to pay the rental as determined and fixed by the Landlord." Unless this language is qualified by the language of the sentence which follows, so that the tenant is given an option to cancel in the event of his unwillingness to pay the higher rent demanded by L, the clause would be invalid for the reasons stated in paragraph 3.

If the clause gives T an option to cancel on L's demand for a higher rent and if the "original stipulated monthly rental" for the thirty-day period after L's demand is the $50 which now constitutes the maximum rent, the clause is not inconsistent with the Rent Regulation as to its

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provisions affecting rent payments. However, since the lease which is about to expire has no such clause, T can refuse to sign the new lease and his refusal to sign is not a ground for eviction under Section 6 (a) (1).

The clause also contains an agreement by T to vacate in the event he is unwilling to pay the higher rent demanded by L. This higher rent may be demanded after the expiration of rent control, and an agreement to vacate under those circumstances is not inconsistent with the Regulation. The higher rent may also be demanded during the period of rent control where the maximum rent has been increased by action of the Office of Price Administration. In general, an agreement by a tenant to vacate is invalid under the Regulation, since it constitutes an attempt by the tenant to waive the benefit of the restrictions on eviction of tenants [Section 1 (d)]. However, under the Regulation L has the right to demand of T the amount of the increased maximum rent, and may evict T for refusal to pay such rent, unless this is contrary to the provisions of the lease between L and T. [See Interpretation 6–IV]. Here the demand is not contrary to the provisions of the lease. In the event T refuses to pay the rent demanded, the Regulation permits his eviction.

(Issued September 26, 1942.)

INTERPRETATION M. R.—XII. INCREASE IN TAX ON TELEPHONE SERVICE.

The increase in the Federal excise tax, effective November 1, 1942, presents a question as to the ability of the landlord in a hotel or apartment building to pass on to the tenants the amount of the increase in charges made for telephone service. For local telephone calls the amount of the increase is relatively small, from 6% to 10%. For long-distance calls over 25 cents the increase is somewhat greater. The tax is in form a tax on the subscriber to the telephone service, and not a tax on the room occupant.

Telephone service, supplied to the rooms or apartments in the structure from a central switchboard, must be considered a privilege or facility so closely connected with the use of the dwelling space as to be one of the services provided with the accommodations. The charges for such service are therefore subject to the Rent Regulations, which contain no provisions for passing on the amount of an excise tax. If in the period or on the date determining the maximum rent a charge for the service was made to the tenant, that charge may not be increased on the ground that the cost of the service has increased. Likewise, no adjustment can be granted on the ground of such an increase in individual operating cost.

This conclusion must be qualified, however, in situations in which the charge for the service is not at a flat rate but is adjusted to the amount of the cost of the service. This is clearest as to long-distance calls, where the tenant is commonly charged the exact amount of the telephone company's rate for the call. Where it is understood that the charge for the service supplied depends on a formula, which produces payments varying in amount, the maximum rent is not the specific money amount paid but includes the formula. Compare Interpretation M. R. I. In such a case the amount of the tax can be included in the charge made to the tenant, on the ground that

that charge is a variable amount, determined by the rate fixed for the call.

In the case of local calls, it is a common practice for the hotel or apartment operator to charge a flat rate of 5 or 10 cents per call, which does not reflect the rate charged to the landlord or any other specific formula. Where that was the case in the period or on the date determining the maximum rent, there is no ground on which the increased cost to the landlord can be passed on to the tenant. Difficult cases will arise, where attempts were made to adjust the charge for telephone service more precisely to the cost of the service or to include the amounts of taxes then assessed, but where precise adjustment was rendered difficult by the small sums involved. In such cases the result must depend on whether proof is presented of a reasonably clear and specific formula of computation, which was communicated to and understood by the tenants.

(Issued May 15, 1943.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:]

(a) *Rented on maximum rent date.* For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

INTERPRETATION 4 (a)—I. LEASES WITH CONCESSIONS OR GRADUATED RENT.

The rent for housing accommodations on the maximum rent date is that amount which the landlord is entitled to demand and collect. In the case of a lease providing for a graduated rent or granting a concession, the rent on the maximum rent date is the amount paid or payable. Landlords may petition for adjustment under Section 5 (a) (6) and tenants may apply for an adjustment under Section 5 (c) (5) if the necessary facts are present.

Illustrations: (1) The maximum rent date is April 1, 1941. On October 1, 1940, L leases housing accommodations to T for one year at a monthly rent of $60. L agrees that T need pay no rent for the month of September, 1941. Unless and *until changed* by the Administrator, the maximum rent is $60. Similarly, the maximum rent is $60 should the rent-free month be the month of April, 1941.

(2) The maximum rent date is April 1, 1941. On October 1, 1940, L leases housing accommodations to T for one year at a monthly rent of $60. L agrees that T need pay no rent for the month of September, 1941, the rent for that month to be deducted in equal monthly amounts during the full term, so that T is required by the lease to pay $55 a month for each of the twelve months. The maximum rent is $55 a month.

(3) The maximum rent date is April 1, 1941. On October 1, 1940, L leases housing accommodations to T for one year at a monthly rent of $45 for the first six months (October–March) and $60 for the last six months (April–September). Unless and *until changed* by the Administrator, the maximum rent is $60.

(Issued June 15, 1942; revised May 15, 1943.)

INTERPRETATION 4 (a)—II. EFFECT OF SUBLEASE ON OR SUBSEQUENT TO MAXIMUM RENT DATE.

1. Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On February 1, 1941, L leases housing accommodations to T for a term of two years at a monthly rent of $50. Prior to the maximum rent date, on March 1, 1941, T subleases the accommodations to A for the remainder of the term at a monthly rent of $75.

The maximum rent for the accommodations is $75 per month. However, so long as the lease remains in force between L and T, T will not be obligated to pay more than $50 per month, the amount specified in the lease.

2. Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On February 1, 1941, L leases housing accommodations to T for a term of two years at a monthly rent of $50. Subsequent to the maximum rent date, on October 1, 1941, T subleases the entire accommodations to A for the remainder of the term at a monthly rent of $75.

The maximum rent on April 1, 1941 is $50 and accordingly on June 1, 1942 T must reduce the rent he receives from A, the subtenant. to that amount.

(Issued June 17, 1942; revised May 15, 1943.)

INTERPRETATION 4 (a)—III. SEPARATE MAXIMUM RENTS WHERE ACCOMMODATIONS CHANGED FROM UNFURNISHED TO FURNISHED PRIOR TO EFFECTIVE DATE.

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

1. On April 1, 1941 L is renting a furnished house to T for $40 a month. On February 1, 1942 T sublets to S for $60 a month. On August 1, 1942 T's lease terminates.

The maximum rent for the furnished house is $40 a month, both as between L and T and as between T and S. On and after June 1, 1942 T is entitled to demand and receive only $40 a month from S [Interpretation 4 (a)—II, paragraph 2].

2. On April 1, 1941 L is renting a house to T unfurnished for $25 a month. On February 1, 1942 T sublets to S fully furnished for $40 a month. On August 1, 1942 T's lease terminates.

The maximum rent for the house unfurnished is $25 a month under Section 4 (a) of the Housing Regulation, and for the house furnished is $40 a month under Section 4 (d). The maximum rent of $40 a month furnished is subject to decrease under Section 5 (c) (1) if it is higher than "comparable rents" on April 1, 1942. [See, however, Interpretation 5 (c) (1)—I.]

3. On November 1, 1940 L leased an unfurnished house to T for one year at a rent of $30 a month. On February 1, 1941 T sublet the house to S furnished for $45 a month, and S was in occupancy on April 1, 1941.

There is only one maximum rent for the house, to wit, $45 a month. The accommodations come under Section 4 (a), which establishes only one maximum rent. The maximum rent is the higher of the two rents

in effect on maximum rent date. [See Interpretation 4 (a)—II, paragraph 1.]

(Issued November 14, 1942; revised May 15, 1943.)

INTERPRETATION 4 (a)—IV. NOTICE OF INCREASE IN RENT GIVEN BEFORE MAXIMUM RENT DATE TO BE EFFECTIVE AFTER MAXIMUM RENT DATE.

Assume that the maximum rent date is March 1, 1942, and that the effective date of the Housing Regulation is June 1, 1942.

T occupies premises owned by L at a rental of $30 a month, payable on the fifteenth of each month. On February 15, 1942, L notifies T that beginning March 15, 1942, the rent will be $40 a month.

The maximum rent is $30 a month under Section 4 (a) of the Housing Regulation. The fact that notice of the increase was given before March 1, 1942, is immaterial, since the increase was not effective until March 15, 1942.

(Issued September 3, 1942.)

INTERPRETATION 4 (a)—V. LEASE MADE PRIOR TO MAXIMUM RENT DATE FOR TERM COMMENCING AFTER MAXIMUM RENT DATE.

Assume in each of the following situations that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

1. On April 1, 1941 a house was being rented to T under a lease which expired April 30, 1941, for a rent of $40 a month. On March 15, 1941, L entered into a one-year lease of the house with X for $50 a month, the term to commence on May 1, 1941.

The maximum rent is $40 a month, under Section 4 (a) of the Housing Regulation, since that was the rent for the rental period which included April 1, 1941.

2. On March 15, 1941 a lease of a house to T, providing a rent of $40 a month, expired and T immediately vacated. On that date L entered into a lease with X for a term to commence May 1, 1941 providing a rent of $50 a month. The premises were not occupied between March 15 and May 1.

The maximum rent is $40 a month under Section 4 (b) of the Housing Regulation. [See Interpretation 4 (a)—IV.]

(Issued November 16, 1942.)

INTERPRETATION 4 (a)—VI. EFFECT OF RESCISSION OF RENTAL AGREEMENT MADE PRIOR TO MAXIMUM RENT DATE.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. During January 1942 a house owned by L was vacant. On February 1, 1942 L made an agreement with X to rent the house at $40 a month for a term commencing on March 1, 1942. Thereafter X was obliged to leave the city and, on February 15, 1942, the agreement was rescinded by mutual consent. The house remained vacant until April 1, 1942, when it was rented to T for $50 a month.

The maximum rent is $50 a month under Section 4 (c) of the Housing Regulation. The house was not rented on March 1, 1942 nor

during the two months ending on that date within the meaning of Section 4 (a) and (b).

2. Assume in the above case that the agreement was rescinded on March 5, 1942 instead of February 15. X never occupied the house, but was entitled to possession on March 1, 1942.

The maximum rent is $40 a month under Section 4 (a) of the Housing Regulation. Within the meaning of that provision the house was rented to X on March 1, 1942. [Compare Interpretations 4 (b)—I and 4 (c)—III.]

(Issued February 13, 1943.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:]

(b) *Not rented on maximum rent date but rented during two months ending on that date.* For housing accommodations not rented on the maximum rent date, but rented at any time during the two months ending on that date, the last rent for such accommodations during the two-month period.

INTERPRETATION 4 (b)—I. EFFECT OF RESCISSION OF RENTAL AGREEMENT MADE DURING TWO MONTHS ENDING ON MAXIMUM RENT DATE.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. On February 1, 1942 L made an agreement with X to rent a house at $40 a month for a term commencing on February 15, 1942. The house was vacant during January 1942. Thereafter X was obliged to leave the city and on February 10, 1942 the agreement was rescinded by mutual consent. The house remained vacant until April 1, 1942, when it was rented to T for $50 a month.

The maximum rent is $50 a month under Section 4 (c) of the Housing Regulation. Within the meaning of Section 4 (b) of that Regulation the house was not rented during the two months ending on maximum rent date.

2. Assume in the above case that the agreement was rescinded on February 20, 1942 instead of February 10. The maximum rent is $40 a month under Section 4 (b) of the Housing Regulation. Within the meaning of that provision, the house was rented on February 15, 1942, that is, during the two months ending on maximum rent date. [Compare Interpretations 4 (a)—VI and 4 (c)—III.]

(Issued February 13, 1943.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:]

(c) *First rent after the maximum rent date but before effective date.* For housing accommodations not rented on the maximum rent date nor during the two months ending on that date, but rented prior to the effective date of regulation, the first rent for such accommodations after the maximum rent date. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

INTERPRETATION 4 (c)—I. CREATION OF NEW DWELLING UNITS.

Within the category of housing accommodations which were not rented on the maximum rent date and which were first rented between the maximum rent date and the effective date should be included accommodations which have been enlarged by substantial additions of space for dwelling purposes, provided the additional space is usable and is in fact used as part of the same dwelling unit. Such a situation would not be governed by Section 4 (d) (2) of the Housing Regulation, which provides for change through increase or decrease in the *number* of dwelling units. In the case supposed the number of dwelling units remains the same but the particular unit is altered through addition of space. The same principles would apply to a substantial decrease in space.

ILLUSTRATIONS

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

(1) On February 1, 1941 the owner of a six-room house lived in two of the rooms and rented to T the remaining four rooms at a monthly rent of $40. On October 1, 1941 the owner, having sold the house to L, vacated the premises as did T. On January 1, 1942 L rented the entire house to A at a monthly rent of $60.

In this instance, the particular housing accommodations rented by L to A consist of the six-room house. It was first rented between the maximum rent date and the effective date of the Regulation. The maximum rent is $60 under Section 4 (c) of the Housing Regulation, unless and until changed by the Administrator pursuant to Section 5 (c) (1).

(2) On February 1, 1941, L rented to T all three rooms on the second floor of a two-story house at a monthly rent of $40. On October 1, 1941, L rented to T the same three rooms and also one room on the first floor, which room L had been occupying until that date, the monthly rent being increased to $60. All four rooms are usable and are in fact used by T as a single dwelling unit.

The particular housing accommodations, consisting of four rooms, were not rented on the maximum rent date nor within the two months prior thereto. The maximum rent is $60 under Section 4 (c), unless and until changed by the Administrator pursuant to Section 5 (c) (1).

(3) On February 1, 1941 L rented to T a six-room house at a monthly rent of $50. On October 1, 1941 the lease of this house expired and L and T entered into a new lease providing a rental of $120 and including both the six-room house occupied by T and a five-room house on an adjoining lot which T, as authorized under his lease with L, proceeded to sublet to A. The maximum rent for the six-room house occupied by T is $50, the rent on the maximum rent date. The two structures are not only physically separate but they are not in fact used as a single dwelling unit. Their inclusion in a single lease, executed between the maximum rent date and the

effective date of the Regulation, does not bring them within the scope of Section 4 (c).

(Issued July 8, 1942.)

INTERPRETATION 4 (c)—II. APPLICATION OF SECTION 4 (c) OF THE HOUSING REGULATION TO NEW DWELLING UNITS; REVERSION TO RENT DETERMINED UNDER SECTION 4 (a) WHERE UNIT RENTED ON MAXIMUM RENT DATE IS AGAIN RENTED.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

On November 1, 1940 L leased a house to T for a one-year term at $50 a month. T occupied the downstairs and on December 1, 1940 sublet the upstairs to S for $30 a month. The premises were rented in this manner on April 1, 1941. When T's lease expired he vacated, whereupon, on November 1, 1941, L rented the upstairs to S for $40 a month and the downstairs to X for $40 a month. The premises were rented in this manner on June 1, 1942.

The maximum rent for the downstairs is $40 a month under Section 4 (c) of the Housing Regulation. The maximum rent for the upstairs is $30 a month under Section 4 (a). The maximum rent for the entire house is $50 a month under Section 4 (a).

The upstairs was rented on April 1, 1941 and the maximum rent for this dwelling unit is established by the rent on that date. The downstairs was first rented as a separate dwelling unit on November 1, 1941, and the maximum rent is established by the first rent under Section 4 (c). This rent is subject to decrease by the Rent Director under Section 5 (c) (1) if it is higher than the rent generally prevailing in the defense-rental area for comparable accommodations on April 1, 1941.

The entire house was rented as a unit on maximum rent date for $50 a month and this is the maximum rent for the house. If at a later date L again rents the entire house as a unit, the applicable maximum rent will be $50 a month.

(Issued November 6 and December 1, 1942; revised May 15, 1943.)

INTERPRETATION 4 (c)—III. EFFECT OF RESCISSION OF RENTAL AGREEMENT MADE FOR ACCOMMODATIONS NOT RENTED ON MAXIMUM RENT DATE OR DURING TWO MONTHS ENDING ON THAT DATE.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. A house was not rented on March 1, 1942 nor during the two months ending on that date. On April 15, 1942 L made an agreement with T to rent the house at $50 a month for a term commencing on May 1, 1942. On April 25, 1942 this agreement was rescinded by mutual consent and it was agreed between L and T that the rent would be $60 a month. T entered into possession on May 1 and paid $60 rent.

The maximum rent is $60 a month under Section 4 (c) of the Housing Regulation. Within the meaning of that provision the house was not rented on the making of the first agreement, later rescinded, even though that agreement was binding from April 15 until its rescission on April 25.

2. Assume in the above case that the agreement was rescinded on May 5, 1942 instead of April 25. T did not occupy until May 5 when the new agreement was made, but was entitled to possession from May 1.

The maximum rent is $50 a month under Section 4 (c). Within the meaning of that provision the house was rented under the first agreement and the rent provided in that agreement is the "first rent." [Compare Interpretations 4 (a)—VI and 4 (b)—I.]

(Issued February 13, 1943.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:]

(d) *Constructed or changed before effective date.* For (1) newly constructed housing accommodations without priority rating first rented after the maximum rent date and before the effective date of regulation, or (2) housing accommodations changed between those dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations changed between those dates from unfurnished to fully furnished, or from fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change: *Provided, however,* That, where such first rent was fixed by a lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

See: When change from unfurnished to fully furnished occurs by addition of furniture separately owned: Interpretation 1 (a)—V, p. 4.
Accommodations rented unfurnished on maximum rent date and subleased furnished prior to effective date: Interpretation 4 (a)—III, paragraph 2, p. 30.

INTERPRETATION 4 (d)—I. PROCEDURE WHERE THERE IS DOUBT AS TO WHETHER A MAJOR CAPITAL IMPROVEMENT HAS OCCURRED.

The Housing Regulation provides, in Section 4 (d), that where housing accommodations have been substantially changed after the maximum rent date and before the effective date of the Regulation "by a major capital improvement as distinguished from ordinary repair, replacement and maintenance," the maximum rent is the first rent after such change. Where the question whether there has been a major capital improvement is a close one, the landlord may not wish to take the risks involved in making his own determination of the question. In such a situation there is, within the meaning of Section 5 (d), doubt concerning a "fact necessary to the determination of the maximum rent." The Rent Director on his own initiative may determine this fact for purposes of establishing the maximum rent.

If the Rent Director finds that there was a substantial change by a major capital improvement and that the maximum rent is the first rent after such change, this establishes the maximum rent for the accommodations from the effective date of the Regulation, even

though the Rent Director's determination is made some time after such effective date.

Under Section 5 (c) (1) the Rent Director may decrease this maximum rent if it is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on maximum rent date. In the proceeding under Section 5 (d), initiated for the purpose of ascertaining whether there had been a major capital improvement, the Rent Director would have power to consider also whether the first rent after such improvement (if he finds that there was one) is higher than comparable rents. On the other hand the Rent Director would have power to make this determination in a later proceeding. Whether both determinations should be made in one proceeding should depend upon the need for expeditious determination of the major capital improvement question.

Should the Rent Director determine in one proceeding, first, that there has been a substantial change by a major capital improvement and, second, that the maximum rent thereby established should be decreased, the maximum rent established by determination of the first issue is the maximum rent from the effective date of the Regulation to the effective date of the order. Under the Regulation, orders in adjustment proceedings are not retroactive; therefore the Rent Director's order decreasing the maximum rent under Section 5 (c) (1) establishes a new maximum rent commencing with the effective date of the order.

The following example illustrates the above statements:

Assume that the maximum rent date is April 1, 1941 and that the effective date of the Housing Regulation is June 1, 1942. On April 1, 1941 the rent for the housing accommodations is $30 a month. In December 1941 the landlord completes a major capital improvement and the first rent thereafter is $50.00 a month. Instead of himself making the determination that the housing accommodations come under Section 4 (d), the landlord charges $30 a month beginning June 1, 1942. On August 1, 1942 the Rent Director finds that there was a major capital improvement and enters an order fixing the maximum rent at $50. This is the maximum rent for the accommodations from June 1, 1942 to August 1, 1942. In the same order the Rent Director finds that the maximum rent of $50.00 a month is higher than the rent generally prevailing for comparable housing accommodations in the Defense-Rental Area on April 1, 1941 and decreases the maximum rent to $40. The maximum rent thereupon becomes $40 commencing on August 1, 1942.

Whether the landlord may recover from the tenant the difference between $30 and $50 a month for the months of June and July will depend upon the facts of each case and upon the local law; for example, the receipt of $30 a month for these months under particular facts might be held by a court to constitute a waiver.

(Issued July 6, 1942.)

INTERPRETATION 4 (d)—II. ACCOMMODATIONS CHANGED PRIOR TO EFFECTIVE DATE AND RENTED AFTER EFFECTIVE DATE.

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation, June 1, 1942.

1. On April 1, 1941 a house is rented for $30 a month. Thereafter L makes a major capital improvement which is completed on May 15, 1942. The premises were vacant while the improvement was being made and were first rented after the improvement on July 1, 1942 for $50 a month.

The maximum rent is $50 a month under Section 4 (d) (4) of the Housing Regulation. That section applies even though the property was first rented after the effective date of the Regulation. This is true of cases under subparagraphs 2, 3 and 4 of Section 4 (d). Subparagraph (1) of Section 4 (d) is specifically limited to accommodations first rented prior to effective date; there is no such limitation in the subsequent subparagraphs.

2. On April 1, 1941 L was renting an unfurnished house to X for $40 a month. In January 1942 X vacated and L moved his furniture into the house and lived there until July 1, 1942. On that date L moved out, leaving his furniture, and rented the house, furnished, to T for $60 a month.

The maximum rent for the house is $60 a month under Section 4 (d) (3). The house was changed from unfurnished to furnished prior to the effective date and Section 4 (d) (3) applies even though the furnished house was first rented after that date.

(Issued October 31, 1942.)

INTERPRETATION 4 (d)—III. CHANGE FROM UNFURNISHED TO FURNISHED—SEPARATE MAXIMUM RENTS UNDER SECTION 4 (a) AND 4 (d) OF HOUSING REGULATION.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

On April 1, 1941 L is renting a house unfurnished to X for $25 a month. X vacates and on September 1, 1941 L rents the house furnished to Y for $40 a month. Y vacates prior to June 1, 1942 and on that date L is renting the house to T unfurnished for $35 a month.

The maximum rent for the house unfurnished is $25 a month under Section 4 (a) of the Housing Regulation and L must reduce the rent to that amount. The maximum rent for the house furnished is $40 a month under Section 4 (d) of the Housing Regulation. In this instance separate maximum rents are established for the house, furnished and unfurnished, under Section 4. [Compare Interpretation 4 (a)—III.] L may thus rent the house furnished after June 1, 1942 for $40 a month. The Rent Director may decrease the $40 rent for the furnished house under the provisions of Sections 4 (d) and 5 (c) (1) if that rent is higher than "comparable rents" on April 1, 1941.

(Issued November 14, 1942.)

INTERPRETATION 4 (d)—IV. CHANGE IN NUMBER OF DWELLING UNITS.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

On April 1, 1941 L was operating a structure containing four apartments, each of which was rented for $40 a month. In January 1942 L changed the two second-floor apartments so as to make three units, largely through a rearrangement of rooms. The two first-floor apartments were left unchanged. On February 1, 1942 L rented each of the

three new units for $40 a month and at the same time raised the rent of each of the first-floor apartments to $50 a month.

The maximum rent for each of the three new second-floor apartments is $40 a month, under Section 4 (d) (2) of the Housing Regulation. These rents may be decreased by the Rent Director under Section 5 (c) (1) if they are higher than rents generally prevailing in the defense-rental area for comparable accommodations on April 1, 1941. The maximum rent for each of the first-floor apartments is $40 a month under Section 4 (a). The provisions of Section 4 (d) (2) establish maximum rents only for new units resulting from the change in number of dwelling units. The space in the first-floor apartments was not affected by the increase in number of dwelling units which was made on the second floor; thus the first rent provisions of Section 4 (d) are inapplicable to those apartments.

The new second-floor apartments are also covered by Section 4 (c), since they are new housing accommodations first rented after April 1, 1941. [See Interpretation 4 (c)—I.]

(Issued December 1, 1942.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:]

(e) *First rent after effective date.* For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or the effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

INTERPRETATION 4 (e)—I. RENTING IN VIOLATION OF REGULATION PRIOR TO SUPPLEMENTARY AMENDMENT NO. 4.

Assume the effective date of the Regulation is July 1, 1942. On July 15, 1942 L rented to A for a rent of $70 a month a house which had never been rented prior to that time. This renting, without prior petition for permission to rent and a delay of 15 days thereafter, was a violation of Section 4 (e) of the Housing Regulation, under its provisions prior to the amendment effective September 22, 1942. On August 15, 1942 A vacated the premises. L then petitioned the Area Rent Director to fix a maximum rent for the house. No action having been taken on this petition within 15 days after August 15, L on September 15 proceeded to rent the premises to B for $90 a month.

The maximum rent is $70 a month. Under the provisions of Section 4 (e), as amended by Supplementary Amendment No. 4 to the Housing Regulation (effective September 22, 1942), the maximum rent is the "first rent" after the effective date of the Regulation, though in no event more than the maximum rent provided by an order issued prior to September 22. The provisions of Section 4 (e) prior to the amendment fixed no maximum rent in cases coming within its provisions, until a petition had been filed and 15 days thereafter had elapsed or an order had been entered. After the amendment, however, the first rent of the premises is accepted as fixing the maximum rent (unless an order fixing a lower maximum rent was issued prior to September 22), even though the renting was in violation of the Regulation. L's criminal liability for the violation is, of course, unaffected.

(Issued November 2, 1942.)

INTERPRETATION 4 (e)—II. CREATION OF NEW DWELLING UNITS AFTER EFFECTIVE DATE.

On April 1, 1941, the maximum rent date, L was renting a house to T at a rent of $25 a month. T remains in occupancy after June 1, 1942, the effective date of the Housing Regulation. On July 1, 1942 T rents two unfurnished rooms in the basement to S as a housing accommodation, at a rent of $15 a month.

The maximum rent of the house is $25 a month under Section 4 (a). The maximum rent of the basement rooms occupied by S is $15 a month and is established under Section 4 (e) of the Housing Regulation, since these rooms constitute a housing accommodation not rented until after the effective date of the Regulation. This rent of $15 a month may be decreased under Section 5 (c) (1) if it is higher than the rent generally prevailing in the area for comparable accommodations on maximum rent date.

If T were for any reason to vacate L could rent the basement rooms for $15 a month, the maximum rent for those rooms (or for whatever lower maximum rent may be fixed by order under Section 5 (c) (1)), and could also rent the remaining portions of the structure as a separate dwelling unit to a separate tenant. In the latter event the maximum rent for the remaining portions of the structure would be determined under Section 4 (e) and would therefore be the first rent, subject to decrease under Section 5 (c) (1).

(Issued November 6, 1942; revised May 15, 1943.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:]

(f) *Priority-constructed housing.* For housing accommodations constructed with priority rating from the United States or any agency thereof for which the rent has been heretofore or is hereafter approved by the United States or any agency thereof, the rent so approved, but in no event more than the rent on the maximum rent date, or, if the accommodations were not rented on that date, more than the first rent after that date.

INTERPRETATION 4 (f)—I. DISTINCTION BETWEEN ALTERATION AND CONSTRUCTION.

Section 4 (f) of the Housing Regulation applies to "housing accommodations constructed" with priority rating from the United

States or any agency thereof, for which the rent is approved by the United States or an agency thereof. This provision therefore does not apply to housing accommodations which are not "constructed" with priority rating but merely remodelled, even though the remodelling may involve the creation of new dwelling units through rearrangement of space.

1. L, the owner of a large single-family house, decides to divide it into three apartments. The alteration is effected by the addition of partitions and by changing two of the downstairs rooms into bathrooms and one of the upstairs rooms to a kitchen. To obtain materials necessary for these changes L secures a priority or preference rating order from the War Production Board. In granting the order the War Production Board approves a rental of $50 per month for each of the new units. The alterations are completed in April 1942, and on May 1, 1942 L rents the new units at $50 per month for each unit. The effective date of the Regulation is July 1, 1942. The rent generally prevailing in the area for comparable accommodations on March 1, 1942, the maximum rent date, was $40 per unit.

The maximum rents for the new dwelling units are established under Section 4 (d) (2) of the Housing Regulation. The maximum rent for each unit is thus $50 per month, the first rent after the change. These rents, however, may be decreased by the Rent Director under Section 5 (c) (1). The rent is not determined in this case under Section 4 (f), since the alterations do not constitute construction within the meaning of this term as used in that section. If L is unwilling to proceed with the alterations without knowing in advance how much rent he may charge for the new units, the Rent Director may give an advance opinion as to the amount chargeable.

2. L, the owner of a house, builds an annex thereto which contains a new dwelling unit. To obtain the necessary materials, L secures a priority or preference rating order from the War Production Board. In granting the order the War Production Board approves a rental of $50 per month for the new unit. The annex is completed in April 1942, and on May 1, 1942 L rents the new unit at $50 per month. The effective date of the Regulation is July 1, 1942. The rent generally prevailing in the area for comparable accommodations on March 1, 1942, the maximum rent date, was $40 per month.

The maximum rent for the new unit is $50 per month, the amount approved by the War Production Board. The annex constitutes "housing accommodations constructed with priority rating" within the meaning of Section 4 (f).

(Issued September 23, 1942; revised May 15, 1943.)

INTERPRETATION 4 (f)—II. EFFECT OF INCREASE IN APPROVED RENT BY AGENCY GRANTING PRIORITY.

(1) Assume that the maximum rent date is April 1, 1941. Prior to January 1942, L built a house with the aid of a priority rating granted by the War Production Board, and the Board approved a rent of $45 a month. In January 1942 L applied to the War Production Board to have the approved rent fixed at a higher amount on account of changes in building specifications made necessary by an order of the War Production Board issued after the initial approval. The War Production Board approved a rent of $50 a month. Thereafter L rented the house for $50 a month, this being the first time the house was rented.

The maximum rent is $50 a month. Within the meaning of Section 4 (f) of the Housing Regulation the approved rent is $50 a month, rather than the lower amount which was initially approved by the War Production Board.

Assume in the above case that L rented the house for $45 a month prior to the action of the War Production Board approving the $50 a month rent. The maximum rent will be $45 a month, despite the subsequent approval by the War Production Board of a higher amount.

Assume that L rented the house for $50 a month prior to the action of the War Production Board approving the $50 a month rent. The maximum rent will be $45 a month. L's renting of the house for $50 a month was in violation of the War Production Board order and such action is ineffective to establish a higher maximum rent than would have been established had L complied with War Production Board requirements.

(2) Assume that the maximum rent date is March 1, 1942. Prior to January 1942, L built a house with the aid of a priority rating from the War Production Board which approved a rent of $45 a month. In January 1942 L rented the house to T for $45 a month. Prior to March 1, 1942, T vacated and the house was not thereafter rented again until after action of the War Production Board approving a higher rent. In March 1942 L applied to the War Production Board for an increase in the approved rent because of a change in building specifications made necessary by an order of the War Production Board issued after the original approval. In April 1942 the War Production Board approved a rent of $50 a month and thereafter L rented the house for that amount.

The maximum rent is $50 a month. Under Section 4 (f) of the Housing Regulations having a March 1, 1942 maximum rent date, the maximum rent is the approved rent but in no event more than the rent on March 1, 1942 or, if the accommodations were not rented on that date, the first rent thereafter. The house was not rented on March 1, 1942 and the first rent thereafter was $50 a month.

(3) Assume that the maximum rent date is March 1, 1942. Prior to January 1942, L built a house with the aid of a priority rating from the War Production Board which approved a rent of $45 a month. In January 1942 L rented the house for $40 a month. Thereafter, but before March 1, 1942, L raised the rent to $45 a month, and the house was rented for that amount on March 1, 1942.

The maximum rent is $45 a month under Section 4 (f). However, had this situation occurred in an area with a 1941 maximum rent date, the maximum rent would be $40 a month. The Regulations applicable to those areas provide that the maximum rent under Section 4 (f) shall not be more than the *first rent*, in this case $40 a month; whereas, the Regulations for areas having a March 1, 1942 maximum rent date provide that the maximum rent shall not be more than the rent on March 1, 1942, or, if the accommodations were not rented on that date, the first rent thereafter.

(Issued December 29, 1942.)

[Sec. 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:]

(g) *Housing owned and constructed by the government.* For housing accommodations constructed by the United States or any agency thereof, or by a State of the United States or any of its political subdivisions, or any agency of the State or any of its political subdivisions, and owned by any of the foregoing, the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date, as determined by the owner of such accommodations: *Provided, however,* That any corporation formed under the laws of a State shall not be considered an agency of the United States within the meaning of this paragraph. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

(h) *Housing subject to rent schedule of War or Navy Department.* For housing accommodations rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department, the rents established on the effective date of regulation by such rent schedule. The Administrator may order an increase in such rents, if he finds that such increase is not inconsistent with the purposes of the Act or this regulation.

(i) *Rent established under former section 5 (e).*[1] For housing accommodations with a maximum rent established, prior to March 1, 1943, under the first paragraph of section 5 (e) as that paragraph appeared in Maximum Rent Regulations issued prior to such date,[1] the rent on March 1, 1943, or, if the accommodations were not rented on that date the last rent prior thereto, but in no event more than the maximum rent established under such first paragraph of section 5 (e). The Administrator may order a decrease in the maximum rent as provided in section 5 (c) (8).

INTERPRETATION 4 (i)—I. DETERMINATION OF RENT UNDER SECTION 4 (i).

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. On September 1, 1941 L leased a house containing 12 rooms to T for one year at a rent of $50 a month. When this lease expired on August 31, 1942 the house was being operated by T as a rooming house, with 10 rooms then rented to subtenants. The maximum rents for the rooms are established under the Hotel and Rooming House Regulation and total $200 a month. On September 1, 1942 L entered into an agreement with T to rent the house on a month-to-month basis at a rent of $75 a month. On March 1, 1943 the house is still rented to T at $75 a month.

Prior to March 1, 1943 the maximum rent for the house was established under the first paragraph of Section 5 (e) of the Housing Regulation. This paragraph permitted L, on expiration of the lease on August 31, 1942, to rent the house for a rent not in excess of the aggregate maximum rents of the separate dwelling units in the house. The $75 a month rent was within this limit and was permitted by the first paragraph of Section 5 (e).

On March 1, 1943, by Supplementary Amendment No. 15, the first paragraph of Section 5 (e) was eliminated from the Housing Regulation. On and after March 1, 1943, the maximum rent for the house is established under Section 4 (i) of the Housing Regulation, which was added to the Regulation by the above Supplementary Amendment. Under that paragraph the maximum rent for the house is $75 a month, on and after March 1, 1943. This rent is subject to decrease under Section 5 (c) (8) of the Housing Regulation, which was added by Supplementary Amendment No. 15. A decrease may be ordered if the $75 a month rent is higher than the rent generally prevailing in the Defense-Rental Area for comparable accommodations on March 1, 1942, taking into consideration any increase in the number of subtenants since that date.

2. Assume in the above case that, on December 1, 1942, L increased the rent for the house from $75 to $85 a month, and that this rent was in effect on March 1, 1943. The increase in rent was permitted under the first paragraph of Section 5 (e), as that paragraph appeared in the Housing Regulation prior to Supplementary Amendment No. 15, since the new amount was not in excess of the aggregate maximum rents of the separate dwelling units in the house. On and after March 1, 1943 the maximum rent is $85 a month under Section 4 (i), subject to decrease under Section 5 (c) (8).

3. Assume the same facts as in paragraph 1 except that the lease which was in effect on March 1, 1942 expired on May 1, 1942, whereupon L rented and continued to rent to T on a month-to-month basis for $75 a month. Prior to March 1, 1943, the maximum rent for the house was established under the first paragraph of Section 5 (e). (See Interpretation SL–I.) That paragraph permitted L to receive $75 a month, since this amount was not in excess of the aggregate maximum rents of the separate dwelling units in the structure. On and after March 1, 1943 the maximum rent for the house is $75 a month under Section 4 (i).

(Issued March 1, 1943.)

INTERPRETATION 4 (i)—II. RENT INCREASES EFFECTIVE ON MARCH 1, 1943.

L rented housing accommodations to T for $100 a month, and on February 1, 1943, when the rental agreement terminated, the accommodations were predominantly occupied by subtenants. The rent for the accommodations on maximum rent date was $100 a month, and on February 1, 1943 the total of the maximum rents for the separate dwelling units was $200. Pursuant to local law, L gave T notice that commencing on March 1, 1943 the rent would be $150 a month. Section 4 (i) of the Housing Regulation applies since the maximum rent for the accommodations was established prior to March 1, 1943 under Section 5 (e), and the maximum rent is $150 a month, the rent on March 1. The result would be the same if the lease expired on Feb-

[1] For text and interpretations of Section 5 (e) as it existed prior to amendment, see Appendix to Interpretations, p. 97.

ruary 28, 1943 instead of February 1, provided the increased rent became effective on March 1, 1943.

(Issued May 15, 1943.)

Sec. 5. ***Adjustments and other determinations.*** **In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. In those cases involving a major capital improvement, an increase or decrease in the furniture, furnishings or equipment, an increase or decrease of services, an increase or decrease in the number of subtenants or other occupants, or a deterioration, the adjustment in the maximum rent shall be the amount the Administrator finds would have been on the maximum rent date, the difference in the rental value of the housing accommodations by reason of such change: *Provided, however*, That no adjustment shall be ordered where it appears that the rent on the date determining the maximum rent was fixed in contemplation of and so as to reflect such change. In all other cases, except those under paragraph (a) (7) and (c) (6) of this section, the adjustment shall be on the basis of the rent which the Administrator finds was generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date: *Provided*, That in cases under paragraph (c) (8) of this section due consideration shall be given to any increased occupancy of the accommodations since that date by subtenants or other persons occupying under a rental agreement with the tenant. In cases involving construction due consideration shall be given to increased costs of construction, if any, since the maximum rent date. In cases under paragraph (a) (7) and (c) (6) of this section the adjustment shall be on the basis of the rents which the Administrator finds were generally prevailing in the Defense-Rental Area for comparable housing accommodations during the year ending on the maximum rent date.**

See: Provision for different maximum rents in adjustment proceeding: Interpretation 1 (a)—IV, p. 4.

INTERPRETATION 5—I. ADJUSTMENT IN MAXIMUM RENT PRIOR TO EXPIRATION OF LEASE PROVIDING A RENT LOWER THAN THAT FIXED IN ORDER.

On the effective date of the Regulation a house is rented by L to T under a lease expiring October 1, 1942. The rent stipulated in the lease is $50 a month which is also the maximum rent for the house. On August 1 L completes a major capital improvement and files petition for adjustment. The issue presented is whether the Rent Director may enter an order increasing the maximum rent, if he finds that an increase is warranted, prior to the expiration of the lease.

The Rent Director may enter an order increasing the maximum rent prior to expiration of the lease. However this does not affect the amount of rent which T must pay L during the continuance of the lease. Upon expiration of the lease L may demand a rent up to the maximum rent fixed in the order. Assume, for example, that the Rent Director finds that L has made a major capital improvement and enters an order on August 15 increasing the maximum rent to $60 a month.

Until the lease expires L is entitled to collect only $50 a month since that is what the agreement calls for. Upon expiration of the lease L may demand a rent of $60 a month and if T refuses to pay this amount he may be evicted pursuant to the requirements of local law.

(Issued August 27, 1942.)

INTERPRETATION 5—II. ADJUSTMENT IN AMOUNT HIGHER THAN THAT REQUESTED.

L files a petition for adjustment on the ground that since the effective date of the Regulation the premises have been improved by a major capital improvement. In his petition L requests that the maximum rent be increased from $45 a month, the maximum rent, to $50 a month. The Rent Director finds that on the maximum rent date the rental value of the house would have been increased to the extent of $10 a month if the improvements had occurred at that time.

The Rent Director should fix the maximum rent at $55 a month, rather than the $50 a month requested by L in his petition. Section 5 of the Regulation provides that the adjustment in case of a major capital improvement "shall be the amount the Administrator finds would have been on [the maximum rent date] the difference in the rental value of the housing accommodations by reason of such change." The request in L's petition, for an amount less than the amount found to be the difference in rental value as of the maximum rent date, does not affect the result. L is of course at liberty to charge the tenant less rent than that fixed as the maximum rent.

The same conclusion would follow if L requested less than the amount that the Rent Director found to be the maximum rent in a proceeding under Section 5 (a) (4), 5 (a) (5), or 5 (a) (6), where the standard for adjustment is "the rent which the Administrator finds was generally prevailing in the Defense-Rental Area for comparable housing accommodations" on the maximum rent date.

(Issued September 3, 1942.)

INTERPRETATION 5—III. EFFECT OF ADJUSTMENT ORDERS ENTERED IN MIDDLE OF RENTAL PERIOD.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

(1) On January 1, 1942 L leases a house to T for one year at a rent of $50 a month. On September 1, 1942 L completes a major capital improvement and petitions for adjustment under Section 5 (a) (1). The Rent Director finds that there has been a major capital improvement and that the increase in rental value as of March 1, 1942 by reason of such improvement is $10 a month. He, therefore, enters an order increasing the maximum rent to $60 a month as is authorized by Interpretation 5—I. [See also Interpretation 5 (c) (1)—I.]

The increase in the maximum rent by order of the Rent Director does not automatically entitle L to obtain a higher rent from T. The order does not give L greater rights than he has under his lease. After entry of the order L may demand $60 a month without being in violation of the Regulation; presumably, however, this demand would be contrary to the terms of his agreement.

(2) On March 1, 1942 L is renting a house to T on a month-to-month basis for $50 a month. After July 1, 1942 L completes a major capital improvement and petitions for adjustment under Section 5 (a) (1). On October 10, 1942 the Rent Director enters an order increasing the maximum rent to $60 a month.

The Rent Director's order increasing the maximum rent does not automatically entitle L to collect a greater amount from T. As in the case stated in paragraph 1, L's right to obtain a higher rent from T depends upon the terms of their agreement. Assume, for example, that under local law it is necessary for L to give a 30-day notice to T before he can raise the rent on the month-to-month tenancy. On October 10 L gives notice to T that the rent will be increased to $60. It is assumed that, under local law, the effect of this notice is that T may pay the old rent of $50 on November 1, 1942, with the right to remain in the premises during that month, but is required either to pay the increased rent on December 1, 1942 or vacate the premises. The Rent Director's order does not give L any greater rights to a higher rent from T than he has under local law. The Regulation does permit L to evict T if T fails to pay the higher rent on December 1. [See Interpretation 6—IV.]

However, the receipt by L of the $60 rent for any rental period commencing after October 10, and likewise for the balance of October on a pro rata basis, is not a violation of the Regulation. So far as the Regulation is concerned, L and T may immediately agree upon payment of a proportionate share of the $60 rent for the balance of October as well as payment of $60 on November 1.

(3) On March 1, 1942 L is renting a house to X for $50 a month on a month-to-month basis. Under their agreement the rental period is the calendar month, with the rent due the first day of each month. On August 1, 1942 X vacates and L leases the property to T for one year at a rent of $50 a month. The lease contains a provision as follows: "The lessee hereby agrees that, in the event the maximum legal rent for the premises described herein is increased, the rent to be paid by the lessee is automatically increased to the same amount." After this lease is made L completes a major capital improvement and petitions for adjustment under Section 5 (a) (1). On October 10, 1942 the Rent Director enters an order increasing the maximum rent to $60 a month.

Again, the Rent Director's order does not of itself increase the rent which L can demand of T. L's right to a higher rent depends upon the terms of their agreement. Under the above agreement L doubtless will be entitled to demand $60 a month rent beginning November 1. Whether L is entitled to a proportionate part of the higher maximum rent for the balance of the month of October depends upon a proper interpretation of their agreement. The order is effective on October 10 and operates to increase the maximum rent from that date. There is nothing in the Regulation to prevent L from collecting a pro rata part of the new maximum for the balance of October by agreement with T.

(4) On May 1, 1941 L leases a house to T for one year at a rent of $50 a month. This lease expires on April 30, 1942 and is renewed commencing May 1, 1942 at a rent of $60 a month payable on the first day of each month. On July 1, 1942, in accordance with the Regulation, L reduces the rent to $50 a month, that being the maximum rent. Thereafter, L completes a major capital improvement and petitions for adjustment. On October 10, 1942 the Rent Director enters an order increasing the maximum rent to $60 a month.

The comments under paragraph 3 apply. L's right to a higher rent from and after October 10 depends upon a proper interpretation of the terms of their lease.

(5) On May 1, 1942 L rents a house to T on a month-to-month basis at $60 a month payable on the first day of each month. The house had not theretofore been rented. The rent generally prevailing in the Defense-Rental Area for comparable accommodations on March 1, 1942 was $50 a month. The maximum rent for the house is $60 a month under Section 4 (c) of the Housing Regulation, but is subject to decrease by the Rent Director under Section 5 (c) (1). On October 10, 1942, in proceedings on his own initiative, the Rent Director decreases the maximum rent to $50 a month. This order does not change the maximum rent for the month of October. Thus, if T has already paid $60 rent for October he is not entitled to any refund; if he has not paid October rent by the 10th, he is still obligated to pay $60 as rent for that month. However, for the rental period commencing November 1, 1942, L can demand and receive only $50 a month. [See Interpretation No. 2 (a)—I.]

(Issued October 26, 1942.)

[Sec. 5. *Adjustments and other determinations.* * * *]

(a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:

(1) *Major capital improvement after effective date.* There has been on or after the effective date of regulation a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance.

INTERPRETATION 5 (a) (1)—I. ELEMENTS OF MAJOR CAPITAL IMPROVEMENT.

A "major capital improvement" consists of a substantial change in the housing accommodations such as would materially increase the rental value in a normal market where free bargaining prevailed unaffected by a shortage in housing accommodations. It must be different from ordinary repair, replacement and maintenance.

A major capital improvement falls into one of three categories:

(1) A structural addition,
(2) A structural betterment,
(3) A complete rehabilitation.

(1) *Structural addition.*—A structural addition is a clear addition to the housing accommodations, such as the construction of an additional room or a new porch or the installation of plumbing, heating or electricity where such facilities did not previously exist. The addition need not necessarily be a part of the structure, but might also include a new garage or the installation of sidewalks. If the improvement has resulted in some added feature which did not exist prior to the change of a kind which would normally result in an

increase in the rental value, then it would be a substantial change by a major capital improvement.

(2) *Structural betterment.*—A structural betterment is a qualitative improvement, even though such an improvement is in part a replacement. Within this group would be the modernization of an existing bathroom, the installation of a modern heating plant replacing an antiquated system, a change in the interior partitions such as would improve the layout, and all changes of similar character.

(3) *Complete rehabilitation.*—A complete rehabilitation is a general modernization and reconstruction such as would make the property attractive in a different rental range. Even though the individual items involved would, if considered separately, be normal repair, replacement and maintenance, if, in the aggregate, there is a substantial change in the character of the housing accommodations, there would be grounds for adjustment. The difference between a rehabilitation which is a major capital improvement and ordinary repairs is primarily a question of degree and extent. Only where the rehabilitation is so comprehensive that it could be expected to result in a comparatively high percentage adjustment in rental would it constitute a major capital improvement.

Even though a major capital improvement is made, it does not necessarily follow that an adjustment in the maximum rent is justified. Unless the improvement has resulted in an increase in the rental value of the housing accommodations, no adjustments should be granted. An example would be the installation of an automatic stoker in an apartment building where the landlord is obligated to furnish heat and hot water. Such an improvement does not give the tenants anything they did not previously receive and is made by the landlord solely for his own benefit. No increase in rental value would result, and no adjustment would be warranted.

It is important to note that where the landlord is now obligated to make and is making normal repairs, replacement and maintenance which the tenant was making on the date determining the maximum rent, this is not a major capital improvement but gives grounds for an adjustment based on an increase in services. Likewise, if a new stove or refrigerator not previously provided is now furnished by the landlord, there would be an adjustment based on Section 5 (a) (3).

A landlord who is in doubt whether a proposed change in his property will constitute a major capital improvement within the meaning of Section 5 (a) (1) may request an advance opinion on this question by the Area Rent Director. Such an advance opinion can be given only if substantial reasons are shown for the request and only after submission of complete specifications and estimates of the cost of the work to be done. Whether or not an advance opinion is given, the landlord must file a petition for adjustment after the change is made in conformity with the requirements of the Regulation. If the landlord makes the proposed improvement after receiving an opinion that it will not constitute a major capital improvement, a petition for adjustment will nevertheless be entertained and a decision made on the facts presented in that proceeding.

(Published in the form of a Regional Rent Memorandum on August 3, 1942; issued in the Interpretations series, with addition of final paragraph, on May 15, 1943.)

INTERPRETATION 5 (a) (1)—II. CHANGE IN METHOD OF HEATING OR INSTALLATION OF INSULATION AS MAJOR CAPITAL IMPROVEMENT.

Where the landlord changes the heating equipment from oil-burning to some other type of heating equipment, or where insulation is installed, adjustment of the maximum rent is authorized in some situations. The result will depend to a large extent on whether the landlord or the tenant is supplying heat.

1. *Where the tenant supplies his own heat.*—While a change from an oil to a coal burning unit would not normally constitute a major capital improvement for which an adjustment could be made, the result will be different when the situation occasioned by the fuel oil shortage is taken into account. As a result of this shortage and the consequent rationing of fuel oil, often the accommodations cannot adequately be heated without change to a heating unit using some other form of fuel. Under these circumstances the change may be regarded as from a heating unit which is inadequate to one which is adequate. Consequently whenever the installation of the new unit or the conversion of the oil burner involves a substantial expenditure by the landlord, the change should be regarded as a major capital improvement for which the landlord may secure an adjustment under Section 5 (a) (1) of the Regulation. An adjustment for increased services under Section 5 (a) (3) may likewise be appropriate if it is found that the increase is substantial, even though the elements of a major capital improvement do not exist.

The same considerations apply where the landlord decides on account of the fuel oil shortage to install insulation, including such items as interior lining, weather stripping, storm doors and storm windows. In this case the change is more apt to constitute a major capital improvement irrespective of the shortage of fuel oil, since it results in a permanent reduction of the amount of oil needed to heat the accommodations. Even assuming, however, that the additional insulation would be of little value if the supply of oil were normal, if on account of the shortage and consequent rationing the accommodations could not be heated adequately without the addition, new insulation involving a substantial expenditure by the landlord may be regarded as a major capital improvement for which the landlord is entitled to an adjustment. In determining the amount of the adjustment the Rent Director likewise may take account of the present shortage of oil which did not exist on maximum rent date.

2. *Where the landlord supplies heat.*—The second general situation to be considered is that where the landlord is required to supply heat by reason of the fact that heat was being supplied by him on the maximum rent date. Normally there is no basis for adjustment of the maximum rent where the landlord changes the heating unit or installs insulation, since ordinarily the effect of the change will be merely to enable the landlord to provide the quantity of heat that was provided on the maximum rent date. However, substantial insulation may so increase the comfort and livability of the premises as to justify the conclusion that an adjustment for major capital improvement or for increased services should be allowed, even though the primary gain is to the landlord through reduction in his heating costs.

(Issued May 15, 1943.)

[Sec. 5. *Adjustments and other determinations.* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(2) *Major capital improvement prior to maximum rent date.* There was, on or prior to the maximum rent date, a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, and the rent on the maximum rent date was fixed by a lease or other rental agreement which was in force at the time of such change.

INTERPRETATION 5 (a) (2)—I. RENTAL AGREEMENT "FIXING" RENT ON MAXIMUM RENT DATE.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942. In January 1941 L was renting a house to T, on a month-to-month basis, for $50 a month. During that month L completed a major capital improvement. Under local law L was required to give 30 days notice in order to raise the rent. L did not raise the rent after the improvement, but continued to rent to T for $50 a month until T vacated on September 1, 1941. When T vacated L rented the house to X for $60 a month. L petitions for adjustment under Section 5 (a) (2) of the Housing Regulation.

The petition will be denied. Section 5 (a) (2), as amended by Supplementary Amendment No. 9 effective November 23, 1942, authorizes an adjustment on the ground that

> There was, on or prior to April 1, 1941, a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, and the rent on April 1, 1941 was fixed by a lease or other rental agreement which was in force at the time of such change * * *.

Within the meaning of this provision the rent on April 1, 1941 was not "fixed" by the rental agreement which was in force at the time of the major capital improvement. After making the improvement L could have raised the rent prior to April 1, 1941 but failed to do so. Section 5 (a) (2) authorizes an adjustment only where the landlord, because of a lease or other rental agreement which was in force both at the time of the improvement and on maximum rent date, was prevented from increasing the rent on and prior to maximum rent date so as to reflect such improvement.

(Issued December 5, 1942.)

[Sec. 5. *Adjustments and other determinations.* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(3) *Substantial increase in services, furniture, furnishings or equipment.* There has been a substantial increase in the services, furniture, furnishings or equipment provided with the housing accommodations since the date or order determining its maximum rent. No increase in the maximum rent shall be ordered on the ground set forth in this paragraph (a) (3) unless the increase in services, furniture, furnishings or equipment occurred with the consent of the tenant or while the accommodations were vacant: *Provided,* That an adjustment may be ordered, although the tenant refuses to consent to the increase in services, furniture, furnishings or equipment, if the Administrator finds that such increase (i) is reasonably required for the operation of a multiple dwelling structure or other structure of which the accommodations are a part or (ii) is necessary for the preservation or maintenance of the accommodations.

See: Addition of adjoining land as an increase in services: Interpretation 1 (a)—III, paragraph 2, p. 4.
Addition of maid service as an increase in services: Interpretation 1 (a)—IV, p. 4.
Addition of garage as an increase in services: Interpretation 1 (a)—II, paragraph 2, p. 3.
Shift of obligation to repair and maintain as an increase in services: Interpretation M. R.—IV, paragraph 3, p. 20; Interpretation M. R.—V, paragraph 2, p. 21.
Furnishing stove or refrigerator as an increase in services: Interpretation 5 (a) (1)—I, p. 48.
Change from oil to coal burning unit as increase in services: Intepretation 5 (a) (1)—II, p. 49.

INTERPRETATION 5 (a) (3)—I. GRANT OF PRIVILEGE OF SUBLETTING.

Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On April 1, 1941 L rented to T a ten-room house at a monthly rent of $50, T not having the right to sublet. On October 1, 1941 L renewed the lease to T for a term of one year at a monthly rent of $70, and by the renewal lease granted to T the right to sublet.

The maximum rent is $50. However, L may petition for an adjustment under Section 5 (a) (3), on the ground that the grant of the right to sublet, not possessed on the maximum rent date, is an increase in services, the right to sublet being a "privilege connected with use and occupancy." If the increase is found to be substantial, the maximum legal rent shall be increased by the amount that on April 1, 1941 would have been the increase in the rental value of the housing accommodations by reason of such change.

By Supplementary Amendment No. 15 (effective March 1, 1943), Section 5 (a) (8) was introduced in the Housing Regulation. By that paragraph adjustments are authorized on the ground of substantial increase in the number of sub-tenants since the maximum rent date. Ordinarily a grant of a privilege of subletting will not in itself result in an increase in rental value until the privilege is exercised and subletting actually occurs. In situations of the type stated in this Interpretation, Section 5 (a) (8) will in most instances supplant Section 5 (a) (3) as the basis for adjustment.

(Issued July 31, 1942; last paragraph of comment added May 15, 1943.)

INTERPRETATION 5 (a) (3)—II. ADJUSTMENTS FOR INCREASED OCCUPANCY.

Assume the maximum rent date is March 1, 1942. On that date T resided, with his wife and child, in a house owned by L, for which a maximum rent of $50 a month is established. L was and is obligated to repair and maintain the premises. On July 15, 1942, after the effective date of the Regulation, T took into the house three relatives of his wife, who had recently moved into the area and were unable to secure housing accommodations. The utilities used by the occupants of the house are all supplied by T.

On the facts stated no adjustment of the maximum rent is available under Section 5 (a) (3). It does not appear that T has acquired a privilege of subletting not possessed by the tenant of the premises on the maximum rent date, so that the ground for adjustment suggested in Interpretation 5 (a) (3)—I is not available. The increase in the number of occupants which occurred on July 15, 1942 may, however, be ground for adjustment under Section 5 (a) (8), which was added to the Housing Regulation by Supplementary Amendment 15 (effective March 1, 1943), if the increase in the number of occupants is found to be "in excess of normal occupancy for that class of accommodations" on the maximum rent date.

(Issued August 27, 1942; revised May 15, 1943.)

INTERPRETATION 5 (a) (3)—III. ADDITION OR OMISSION OF A CANCELLATION CLAUSE AS AN INCREASE IN SERVICES.

Assume the maximum rent date is March 1, 1942 and the effective date of Regulation is July 1, 1942.

1. On March 1, 1942 a house owned by L was rented to T under a written lease for a year's term ending on May 31, 1942, the lease providing a rent of $40 a month and containing a clause which authorized L to cancel at any time on 30 days' notice. On May 31, 1942 the lease expired and T vacated. On June 1, 1942 L leased to X under a new lease for one year at a rent of $50 a month, the lease containing no provision for cancellation by L. L petitions for adjustment under Section 5 (a) (3) on the ground that the omission of a clause authorizing cancellation by L represents an increase in services.

The maximum rent is $40 a month and L's petition should be denied. The privilege of cancellation included in the lease in force on maximum rent date represents in effect an option in L to shorten the term. The omission of such privilege from the lease entered into on June 1, 1942 has the effect of ensuring T a full year's term. The Housing Regulation does not establish different maximum rents for different terms. Furthermore, no adjustment for increased services is authorized on the ground that T has been given a longer term than the one in effect on maximum rent date, or an assurance that the particular term will not be shortened by action of L.

2. On March 1, 1942 a house owned by L was rented to T under a written lease for a year's term ending on May 31, 1942, the lease providing a rent of $40 a month and containing no option in either L or T to cancel. On expiration of the lease on May 31, 1942 L entered into a new lease with X commencing June 1, 1942 at a rent of $50 a month, the lease containing a clause which authorized X to cancel at any time on 30 days' notice. L petitions for adjustment under Section 5 (a) (3) on the ground that the inclusion in the lease to X of a privilege of cancellation represents an increase in services.

The maximum rent is $40 a month and L's petition should be denied. The privilege of cancellation given X by the lease commencing June 1, 1942 represents merely an option in X to shorten the term. This no more provides ground for adjustment than would a shift from a renting under a lease for a term to a renting under a month-to-month agreement or other tenancy terminable on notice.

(Issued February 12, 1943.)

INTERPRETATION 5 (a) (3)—IV. INCREASES IN SERVICES AGAINST THE WILL OF THE TENANT.

1. (a) Assume that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942. On both dates L is renting a house to T, without garage, for $40 a month. There is a garage on the lot which L has been renting separately to X. On December 1, 1942, X stops renting the garage and L then demands that T rent the garage for $10 a month. Even though T agrees to rent the garage, the parties are not free to bargain for the amount to be paid. The garage, if rented to T, becomes a service connected with the use or occupancy of the house, and the rent paid is subject to the Regulation. Hence L must petition for adjustment under 5 (a) (3) before he can receive more than $40 a month. [See Interpretation 1 (a)—II.]

Assume in this case that T refuses to rent the garage, having no use for it. L then petitions for adjustment under Section 5 (a) (3). The petition should be denied. Under the amendment no increase in the maximum rent is authorized since the additional service which L is attempting to force on T has not been accepted by T.

(b) Assume in the foregoing case that T vacates the premises on December 1. On December 15 L rents the house and garage to X, a new tenant. X agrees to pay $40 a month for the house, and agrees also to pay $10 a month, or such lower amount as may be fixed by the Rent Director, for the garage, from and after the time an order is entered by the Rent Director. L then petitions for an increase in the rent under Section 5 (a) (3). Since the addition of the garage has occurred with the consent of X, the Rent Director is authorized to increase the maximum rent. On January 1, 1943 he enters an order increasing the maximum rent to $45 a month. From and after that date L may demand and receive $45 a month. [See in this connection Interpretation 5—III.] An interim order, as authorized by Section 5 (f) of the Housing Regulation, is appropriate in a case of this character.

2. (a) L owns a large structure, containing 40 apartments. On January 20, 1943 L decides to provide maid service for all the apartments. Previously no such service had been provided. There is no showing that the supplying of maid service is "reasonably required for the operation" of L's multiple-dwelling structure. As to tenants who refuse to consent to the addition of maid service, an adjustment under Section 5 (a) (3) should not be ordered.

(b) Assume that, in the above apartment building, the apartments have previously been heated individually by stoves. L installs a central heating system, thus providing an increased service for all apartments in the building. The conclusion will be justified that this change was "reasonably required" in the operation of the building, hence an adjustment may be ordered regardless of whether the tenants consented.

The second case illustrates another prerequisite to an adjustment. Central heating is the type of service which, if provided at all, will normally be provided for all accommodations in the structure. On the other hand, some types of services can just as efficiently and easily be provided for one unit alone. Thus, the operator may wish to

install furniture in all apartments, having previously rented unfurnished. While there is doubtless some slight advantage, from an operations standpoint, in being able to rent all apartments on a furnished basis, if any are to be rented on that basis, many apartment buildings actually contain both furnished and unfurnished units and this type of operation is ordinarily entirely feasible. On this ground alone, the conclusion would be warranted that the installation of furniture is not "reasonably required for the operation" of the structure.

(c) Under Section 5 (a) (3) an adjustment also may be ordered, although the increase in services is without the tenant's consent, where the increase "is necessary for the preservation or maintenance of the accommodations." A common case will be where the tenant is obligated to make repairs but fails to do so. The landlord will be justified in making the repairs, if necessary for the preservation or maintenance of the property, and thereupon petition for adjustment. An adjustment will be given only where the service which the landlord has taken over represents a substantial increase over the repairs which he provided or was obligated to provide on the date determining the maximum rent.

(Issued May 15, 1943.)

INTERPRETATION 5 (a) (3)—V. MEASURE OF ADJUSTMENT.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

On April 1, 1941 a house owned by L is rented to T at a rent of $25 a month under a rental agreement by which T is required to supply his own heat. On May 1, 1942 L and T enter into a new rental agreement which provides a rent of $40 a month and provides further that L will heat the premises. After the effective date of the Regulation, L petitions for an adjustment on the ground that there has been a substantial increase in services since April 1, 1941. The Rent Director finds that on April 1, 1941, the rent generally prevailing in the area for comparable accommodations would have been $20 a month without heat, and $27 a month with heat, showing a difference in rental value of $7 a month because of the increased service.

An order should be entered fixing the maximum rent at $32 a month (the rent for the house on April 1, 1941—$25—plus the increase in rental value because of the increased service—$7). The first paragraph of Section 5 of the Housing Regulation provides that in cases involving an increase or decrease in services the adjustment shall be the amount the Administrator finds would have been on the maximum rent date the difference in rental value by reason of such change. In such determination it is irrelevant that the rent for the accommodations on the maximum rent date, without the service subsequently added, was either above or below comparability. The amount of the adjustment should be merely the difference in rental value resulting from the change in services.

The result will be different under the Hotel Regulation in a similar situation. The first paragraph of Section 5 of the Hotel Regulation specifically provides that the increase shall be on the basis of comparability, but in no event more than the difference in rental value on maximum rent date by reason of the increased service. Under the Hotel Regulation, in a similar situation, the maximum rent should be increased to $27 a month.

(Issued October 26, 1942; revised May 15, 1943.)

[Sec. 5. *Adjustments and other determinations* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(4) *Special relationship between landlord and tenant.* The rent on the date determining the maximum rent was materially affected by the blood, personal or other special relationship between the landlord and the tenant and as a result was substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date: *Provided,* That no adjustment under this subparagraph increasing the maximum rent shall be made effective with respect to any accommodations regularly rented to employees of the landlord while the accommodations are rented to an employee, and no petition for such an adjustment will be entertained until the accommodations have been or are about to be rented to one other than an employee.

INTERPRETATION 5 (a) (4)—I. CONCESSION IN RENT MOTIVATED BY GENEROSITY.

Assume in each case that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

1. On January 1, 1941 L rented a house to T under a month-to-month lease at a monthly rent of $40. On January 30, 1941 T was severely injured in a traffic accident, with the result that he faced the prospect of an extended period of incapacity and heavy expenditure for medical care. On February 1, 1941 L agreed with T that the rent for the dwelling leased to T should be reduced to $20 a month, for the period that T was incapacitated, the reduction to become effective March 1, 1941. The rent on April 1, 1941, the maximum rent date, was accordingly $20 a month. On June 1, 1941, T having recovered fully from his injuries, L and T agreed that the rent for the premises leased to T would return to $40 a month, starting July 1, 1941.

The maximum rent for the house is $20 a month, the rent on April 1, 1941, the maximum rent date. However, if it is found by the Area Rent Director that the rent was materially affected by the relationship between L and T on the maximum rent date and that the rent on that date was substantially below the rent for comparable housing accommodations, an adjustment may be granted on the petition of L on the ground of a special relationship [Section 5 (a) (4)]. Close personal friendship between L and T would provide corroborative evidence in meeting the requirements of Section 5 (a) (4), but such personal friendship is not an essential requirement. If L's willingness to rent for a sum substantially below rents for comparable housing accommodations is motivated primarily by generosity to an individual whose need for such a rental concession is clearly shown, the relationship

may be found to be a "special relationship" within the meaning of Section 5 (a) (4). The questions involved are primarily factual. Among the significant issues will be the degree of discrepancy between the rent charged and the rents of comparable accommodations, for, if other circumstances indicate that such motivation existed, a very wide margin of discrepancy will lend support to the conclusion that the transaction to the extent of such discrepancy is in effect a gift.

2. On April 1, 1941, the maximum rent date, T was in occupancy under a rental agreement providing for a monthly rent of $35 a month. On February 1, 1941 L had raised the rents of the tenants of several houses owned by L in the neighborhood, but had not raised T's rent at the same time because T had occupied the premises for 2 years before that date and had been throughout a reliable and satisfactory tenant. On May 1, 1942 T vacated the house and L rented it to X at $45 a month.

The maximum rent of the house is $35 a month. No adjustment of the rent could be granted L under Section 5 (a) (4), even though the rent on April 1, 1941 could be shown to be substantially below the rents for comparable housing accommodations. The advantage secured by L through retaining in occupancy a reliable and satisfactory tenant supplied a motive which differed in no essential respect from the motivations in ordinary processes of bargaining for mutual advantage.

(Issued August 27, 1942.)

INTERPRETATION 5 (a) (4)—II. RENTING BY EMPLOYER TO EMPLOYEES.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Regulation is July 1, 1942. L, a company engaged in textile manufacture, owns more than 100 houses near its mill. It has always followed the policy of renting the houses to its employees, though in the course of years a few exceptions were made. The rental agreements provided that if the occupant ceased to be an employee he would vacate the premises. On April 1, 1941 all houses were rented to employees for $1 per room per month, which was a rental of $4 per month for most houses since they contained four rooms. This rental had been established and remained constant for many years. This was substantially lower than the rent for comparable housing in the area. On November 1, 1941 the rent of all houses was raised to $1.50 per room per month which was not higher than the rent of comparable houses in the area on April 1, 1941. On May 1, 1941 and November 1, 1941 the company raised the wages of its employees but paid the same wages to all employees whether or not they resided in houses owned by the company. On July 1, 1942 all of the houses were rented to employees of L company. The maximum rent on July 1, 1942 was $1 per room per month and the L company reduced its rents accordingly. L company thereafter petitioned for an adjustment increasing the maximum rent on all of its houses on the ground that "the rent on the date determining the maximum rent was materially affected by the blood, personal or other special relationship between the landlord and the tenant and as a result was substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on April 1, 1941."

The maximum rent should not be increased and the adjustment requested under Section 5 (a) (4) should be denied. Pursuant to an established practice, L company had rented to its employees as a class at less than comparable rents. This practice existed for economic reasons and as part of an established economic system. The class of persons to whom the houses were rented and the basic elements of the economic relationship between L company and that class of persons were the same at the time its petition for adjustment was filed as on April 1, 1941. There is nothing to indicate that these elements are about to change in the foreseeable future. Under such circumstances no determination should be made under Section 5 (a) (4) as to whether the type of special relationship there referred to existed nor as to what the rents were for comparable accommodations since that section provides an adjustment only if the relationship has terminated. It is contemplated that adjustment petitions will be entertained only where the relationship has ceased or may probably cease in the near future; and that the increased maximum rent will be allowed by order only subsequent to the time the relationship ceases. The fact that the wages of the employees of L company have changed since the maximum rent date does not constitute such a change in the relationship between the parties.

The conclusion above stated has been expressly incorporated in Section 5 (a) (4) of the Housing Regulation by Supplementary Amendment No. 12, effective December 23, 1942.

(Issued September 30, 1942; last paragraph added May 15, 1943.)

INTERPRETATION 5 (a) (4)—III. MORTGAGEE IN POSSESSION PENDING FORECLOSURE.

On January 10, 1941 an action was commenced to foreclose a mortgage executed by B as mortgagor. On January 30, 1941 a receiver was appointed under an order entered in the foreclosure suit. This order provided that B was to remain in occupancy until six months after final decree of foreclosure, at a rent of $5 a month. The rent for comparable accommodations in the defense-rental area on the maximum rent date was $45. B was in occupancy under this decree on the maximum rent date.

As is indicated in Interpretation 6—III the existence of a tenancy will depend on the local law as to the legal relationship between mortgagor and mortgagee pending foreclosure proceedings. If there was a tenancy on the maximum rent date there may be ground for adjustment for a "special relationship" under Section 5 (a) (4), provided such rent was substantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date. Whether the relationship involved is considered to be one between the tenant and the receiver or the tenant and the mortgagee would for this purpose be immaterial. The rent in this case was determined by a court order based on the relationship arising out of the foreclosure suit, and thus was "materially affected" by such special relationship.

(Issued August 14, 1942; revised May 15, 1943.)

[Sec. 5. *Adjustments and other determinations.* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(5) *Lease for term commencing one year or more before maximum rent date.* There was in force on the maximum rent date, a written lease, for a term commencing on or prior to the date one year before the maximum rent date, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date; or the housing accommodations were not rented on the maximum rent date, but were rented during the two months ending on that date and the last rent for such accommodations during that two-month period was fixed by a written lease, for a term commencing on or prior to the date one year before the maximum rent date, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

INTERPRETATION 5 (a) (5)—I. LEASES IN EFFECT FOR MORE THAN ONE YEAR BUT FOR A TERM STARTING LESS THAN ONE YEAR BEFORE MAXIMUM RENT DATE.

Assume that the maximum rent date is April 1, 1941 and the effective date of the Housing Regulation is June 1, 1942.

1. On March 1, 1940 L entered into a written one-year lease of a house, the term to commence on May 1, 1940. The lease was in effect on April 1, 1941 and the rent provided therein was $40 a month. The rent generally prevailing in the Defense-Rental Area for comparable accommodations on April 1, 1941 was $60.00.

The maximum rent is $40 a month. Assume that, on December 1, 1942, L petitions for adjustment under Section 5 (a) (5) of the Housing Regulation. As a result of Supplementary Amendment No. 9, effective November 23, 1942, the petition should be denied. That amendment authorizes an adjustment only where the written lease was "for a term commencing on or prior to April 1, 1940." In this case the term commenced after that date and the fact that the lease was executed prior to that date is of no consequence.

2. On May 1, 1939 L and T entered into a written one-year lease providing for a rent of $40 a month. The lease provided that upon expiration it would be automatically renewed upon the same terms for a further period of one year unless either L or T gave notice to terminate the lease at least three months prior to its expiration. Neither L nor T gave the required notice and the lease was automatically renewed on May 1, 1940. The lease was in effect on April 1, 1941. The rent generally prevailing in the Defense-Rental Area for comparable accommodations on April 1, 1941 was $60 a month.

The maximum rent is $40 a month. Assume that, on December 1, 1942, L petitions for adjustment under Section 5 (a) (5). As a result of Supplementary Amendment No. 9, the petition should be denied. The term of the lease which was in force on April 1, 1941, the maximum rent date, commenced on May 1, 1940; thus the case does not come within the scope of Section 5 (a) (5), as amended.

(Issued November 16, 1942.)

INTERPRETATION 5 (a) (5)—II. MEANING OF "TERM."

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. On April 1, 1940 L leased a house to T for a term of one year at a rent of $50 a month. The lease provided that on expiration it would be renewed automatically for another year unless either party gave notice to terminate at least 60 days prior to the date of expiration. Neither party gave the required notice, and therefore, on April 1, 1941, the lease was automatically renewed for another year. The lease was in force on March 1, 1942. Under local law the effect of the renewal was to continue the term of the expiring lease, rather than to create a new term commencing on April 1, 1941. The rent generally prevailing in the defense-rental area for comparable housing accommodations on March 1, 1942 was $70 a month. L petitions for adjustment under Section 5 (a) (5), of the Housing Regulation, as amended by Supplementary Amendment No. 9, effective November 23, 1942, which authorizes an adjustment on the ground that

There was in force on March 1, 1942 a written lease, for a term commencing on or prior to March 1, 1941, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942. * * *

The petition will be denied. Within the meaning of Section 5 (a) (5), the term which was in effect on maximum rent date commenced on April 1, 1941. The meaning given to the word "term" by local law is not controlling; regardless of local law the word has a uniform meaning in the regulations. [See also Interpretation 5 (a) (5)—I, paragraph 2.]

2. On April 1, 1940 L leased a house to T for a term of one year at a rent of $50 a month. The lease gave T an option to renew for another year on the same terms and conditions. L reserved no right to cancel so that, on proper exercise of the option by T, the landlord became bound for a further term of one year. T properly exercised his option, the lease was therefore renewed on April 1, 1941, and was in force on March 1, 1942. Under local law the effect of T's exercise of his option was to create a new term rather than to extend the term of the expiring lease. The rent generally prevailing in the defense-rental area for comparable accommodations on March 1, 1942 was $70 a month. L petitions for adjustment under Section 5 (a) (5) of the Housing Regulation.

The petition may be granted. Within the meaning of Section 5 (a) (5), the term commenced on April 1, 1940 rather than on April 1, 1941. An adjustment in this case is in accordance with the purposes of Section 5 (a) (5).

3. On January 1, 1941 L leased a house to T for an 18-month term at a rent of $50 a month. The lease gave L an option to terminate at any time on 30 days notice. L did not exercise the option and thus the lease was in force on March 1, 1942. The rent generally prevailing in the defense-rental area for comparable accommodations on March

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1, 1942 was $70 a month. L petitions for adjustment under Section 5 (a) (5) of the Housing Regulation.

The petition will be denied. The purpose of Section 5 (a) (5) is to permit adjustment only where L was not free to raise the rent fixed by the lease.

(Issued January 7, 1943.)

[Sec. 5. *Adjustments and other determinations.* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(6) *Varying rents.* The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a substantially higher rent at other periods during the term of such lease or agreement.

See: Situations in which adjustments under Section 5 (a) (6) may be proper: Interpretation M. R.—VIII, p. 23; Interpretation 4 (a)—I, p. 29.

INTERPRETATION 5 (a) (6)—I. MEANING OF "TERM."

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. On April 1, 1941 L leased a house to T for a term of one year at a rent of $50 a month. The lease provided that on expiration it would be renewed automatically for another year, at a rent of $60 a month instead of $50, unless either party gave notice to terminate at least 60 days prior to the date of expiration. Neither party gave the required notice to terminate and on April 1, 1942 the lease was automatically renewed for another year at a rent of $60 a month. Under local law the effect of the renewal was to continue the term of the expiring lease, rather than to create a new term commencing on April 1, 1942. The rent generally prevailing in the defense-rental area for comparable housing accommodations on March 1, 1942 was $70 a month. L asserts that the lease in effect on March 1, 1942 was for a two-year term, providing for a rent of $50 a month the first year and $60 a month the second. He petitions for adjustment under Section 5 (a) (6) of the Housing Regulation, which authorizes an adjustment on the ground that

> The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a substantially higher rent at other periods during the term of such lease or agreement.

The petition will be denied. Within the meaning of Section 5 (a) (6), a new term commenced on April 1, 1942, regardless of the meaning given to the word "term" by local law. Hence the rent on maximum rent date was established by a lease for a one-year term which expired on April 1, 1942, and that lease did not provide for a higher rent at other periods during the term.

2. On April 1, 1941 L leased a house to T for a term of one year at a rent of $50 a month. The lease gave T an option to renew for another year at a rent of $60 a month instead of $50. L reserved no right to cancel so that, on proper exercise of the option, the landlord became bound for a further term of one year. T exercised the option,

and the lease was therefore renewed for another year commencing on April 1, 1942 at $60 a month. L petitions for adjustment under Section 5 (a) (6) of the Housing Regulation.

The petition will be denied. Within the meaning of Section 5 (a) (6) a new term commenced on April 1, 1942. Hence, the rent on March 1, 1942 was fixed by a lease for a one-year term which expired on April 1, 1942, and that lease did not provide for a higher rent at other periods during the term.

(Issued January 7, 1943.)

[Sec. 5. *Adjustments and other determinations.* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(7) *Seasonal rents.* The rent on the date determining the maximum rent was substantially lower than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

INTERPRETATION 5 (a) (7)—I. "SEASONAL VARIATIONS" IN THE RENT.

1. (a) Assume that the maximum rent date is July 1, 1941. L owns an apartment building and has always supplied heat for the apartments. Prior to maximum rent date, and since, it was his practice to charge $5 a month more in winter than in summer for the apartments. In May 1941 L rented an apartment to T, by an oral agreement, on a month-to-month basis. It was agreed that the rent would be $40 a month from May through October, and $45 a month from November through April. The rent on maximum rent date was $40 a month. This is the maximum rent for the apartment under Section 4 (a) of the Housing Regulation. L petitions for adjustment under Section 5 (a) (7) of that regulation, as amended by Supplementary Amendment No. 16 which became effective on March 4, 1943. Section 5 (a) (7), as amended, reads as follows:

> The rent on the date determining the maximum rent was substantially lower than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

The petition may be granted. Within the meaning of Section 5 (a) (7) the rent on maximum rent date was substantially lower than at other times of year by reason of "seasonal variations in the rent" for the apartment. The Rent Director is authorized to enter an order providing different maximum rents for the summer and winter months.

(b) Assume in the foregoing case that, on and prior to maximum rent date, L's practice had been to rent the apartment for $40 a month the year round. The agreement between L and T did not contemplate that the rent would be higher during the winter months. In September, 1941, which was after the maximum rent date, L decided to charge $5 a month more during the winter months than during the summer. The rent on the apartment occupied by T was raised to $45 a month.

beginning November 1, 1941, it being understood that the rent from May through October would be $40 a month. L petitions for adjustment under Section 5 (a) (7), as amended.

The petition will be denied. The rent on maximum rent date was not lower than at other times of year by reason of "seasonal variations in the rent." The subsequent seasonal variation in the rent for the apartment did not influence the amount of the rent on maximum rent date.

(c) Assume in the case stated in paragraph 1 (a) that the maximum rent date is March 1, 1942. The rent on that date was $45 a month, and this becomes the maximum rent under Section 4 (a) of the Housing Regulation. By Section 5 (c) (6) of that regulation, as amended by Supplementary Amendment No. 16, the Rent Director is authorized to decrease the $45 maximum rent, since the rent on March 1, 1942 was substantially higher than at other times of year by reason of "seasonal variations in the rent." An order may be entered providing different maximum rents for the summer and winter months.

2. (a) Assume that the maximum rent date is March 1, 1942. L owns a house for which heat has always been supplied by the tenant. Prior to maximum rent date, and since, it was L's practice to charge $5 a month more in summer than in winter due to the fact that heat was supplied by the tenant. In the summer of 1941 L rented the house to T, by an oral agreement, on a month-to-month basis. It was agreed that the rent would be $45 a month from May through October, and $40 a month from November through April. The rent on March 1, 1942 was $40 a month, and this becomes the maximum rent under Section 4 (a) of the Housing Regulation. L petitions for adjustment under Section 5 (a) (7) of that regulation, as amended.

The petition may be granted. Within the meaning of Section 5 (a) (7) the rent on maximum rent date was substantially lower than at other times of year by reason of "seasonal variations in the rent." The Rent Director is authorized to enter an order providing different maximum rents for the summer and winter months.

(b) Assume in the above case that the maximum rent date is July 1, 1941. The rent on that date was $45 a month, which becomes the maximum rent under Section 4 (a) of the Housing Regulation. The Rent Director is authorized to decrease the maximum rent under Section 5 (c) (6), as amended, and to provide different maximum rents for the summer and winter months.

3. Assume that the maximum rent date is March 1, 1942. In January 1942, by an oral agreement, L rented a house to T on a month-to-month basis for $40 a month. It was agreed that the rent would be increased to $45 a month beginning on May 1, 1942, and on that date L did so increase the rent. The maximum rent is $40 a month under Section 4 (a) of the Housing Regulation. L petitions for adjustment under Section 5 (a) (7) of that regulation, as amended.

The petition will be denied. The higher rent was not due to seasonal variations in the rent, but was simply an agreement made prior to maximum rent date for a rent increase to take effect after that date. Nor is an adjustment in the rent authorized by Section 5 (a) (6) of the Housing Regulation, which applies where the rent

on maximum rent date was established by a "lease or other rental agreement which provided for a substantially higher rent at other periods during the term of such lease or agreement."

(Issued February 26, 1943.)

[Sec. 5. *Adjustments and other determinations.* * * * (a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:]

(8) *Substantial increase in occupancy.* There has been, since the maximum rent date, either (i) a substantial increase in the number of subtenants or other persons occupying the accommodations or a part thereof under a rental agreement with the tenant, or (ii) a substantial increase in the number of occupants, in excess of normal occupancy for that class of accommodations on the maximum rent date, or (iii) an increase in the number of occupants over the number contemplated by the rental agreement on the date determining the maximum rent, where the landlord on that date had a regular and definite practice of fixing different rents for the accommodations for different numbers of occupants.

INTERPRETATION 5 (a) (8)—I. ADJUSTMENTS FOR INCREASED SUBLETTING AND INCREASED OCCUPANCY.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing Regulation is July 1, 1942.

1. On March 1, 1942 L was renting a seven-room house to T on a month-to-month basis for $50 a month. On that date T occupied the entire house. Thereafter T began taking in roomers and at the present time has six roomers who occupy three rooms of the house. The rents received by T from the roomers total $100 a month. L may petition for adjustment under Section 5 (a) (8) (i) which was added to the Housing Regulation on March 1, 1943 by Supplementary Amendment No. 15. Under that provision there has been a substantial increase "in the number of subtenants or other persons occupying the accommodations or a part thereof under a rental agreement with the tenant" since March 1, 1942.

Assume that an order is entered by the Rent Director increasing the maximum rent under Section 5 (a) (8). Thereafter T stops renting rooms and occupies the entire house himself. The Rent Director may decrease the maximum rent under Section 5 (c) (7), which was added to the Housing Regulation by Supplementary Amendment No. 15.

2. (a) On March 1, 1942 L is renting a five-room house to T on a month-to-month basis, the house being occupied by T and his wife. On that date five-room houses of this character in the area in question were normally rented to families ranging from two to five in number. At the present time L is renting the house to a new tenant and the house is occupied by the tenant, his wife and three children. L petitions for adjustment under Section 5 (a) (8) of the Housing Regulation.

The petition will be denied. An adjustment is permitted in this situation under Section 5 (a) (8) (ii) only where the present number of occupants is in excess of normal occupancy for the particular class of accommodations. The present occupancy of the house is not above normal occupancy.

(b) Assume the above facts except that the tenant's mother and father come to visit the tenant for a month and live in the house during that time. L petitions for adjustment under Section 5 (a) (8) of the Housing Regulation.

The petition will be denied. Within the meaning of Section 5 (a) (8) (ii) there has been no increase in the number of occupants. An adjustment is not authorized unless the circumstances indicate that occupancy by the additional persons is more than temporary.

(c) Assume that L is now renting the house described in paragraph 2 (a) to two families and the number of permanent occupants is eight. An order may be entered increasing the maximum rent under Section 5 (a) (8) (ii), since there has been a substantial increase in the number of occupants and the present number is in excess of normal occupancy.

3. On March 1, 1942 L was operating an apartment house containing 20 identical apartment units. L's regular practice at that time was to charge $45 a month rent for each apartment when it was rented for occupancy by three or less persons, and to charge $50 a month rent when rented for occupancy by four or five persons. On March 1, 1942 L was renting an apartment to a tenant for $45 a month on the understanding that the apartment was to be occupied by three persons. Since that date this apartment has been rented to a new tenant with a family of six. L petitions for adjustment under Section 5 (a) (8) of the Housing Regulation.

An order may be entered increasing the maximum rent in this case because of an increase in the number of occupants. Within the language of Section 5 (a) (8) (iii) L had a regular and definite practice on March 1, 1942 of fixing different rents for the accommodations for different numbers of occupants. Under such circumstances an adjustment is authorized since the present number of occupants is in excess of the number contemplated by the agreement in effect on March 1, 1942. An adjustment is authorized even though six persons is not in excess of normal occupancy for apartments of this character on March 1, 1942.

(Issued March 1, 1943.)

[Sec. 5. *Adjustments and other determinations.* * * *]

(b) *Decreases in minimum services, furniture, furnishings and equipment*—(1) *Decreases prior to effective date.* If, on the effective date of regulation, the services provided for housing accommodations are less than the minimum services required by section 3, the landlord shall either restore and maintain such minimum services or, within 30 days (or, for housing accommodations within the Los Angeles Defense-Rental Area, within 60 days) after such effective date, file a petition requesting approval of the decreased services. If, on such effective date (or on December 1, 1942 where the effective date of regulation is prior to that

date), the furniture, furnishings or equipment provided with housing accommodations are less than the minimum required by section 3, the landlord shall, within 30 days after such date, file a written report showing the decrease in furniture, furnishings or equipment.

(2) *Decreases after effective date.* Except as above provided, the landlord shall, until the accommodations become vacant, maintain the minimum services, furniture, furnishings, and equipment unless and until he has filed a petition to decrease the services, furniture, furnishings, or equipment and an order permitting a decrease has been entered thereon; however, if it is impossible to provide the minimum services, furniture, furnishings, or equipment he shall file a petition within 10 days after the change occurs. When the accommodations become vacant the landlord may, on renting to a new tenant, decrease the services, furniture, furnishings, or equipment below the minimum; within 10 days after so renting the landlord shall file a written report showing such decrease.

(3) *Adjustment in maximum rent for decreases.* The order on any petition under this paragraph may require an appropriate adjustment in the maximum rent; and any maximum rent for which a report is required by this paragraph may be decreased in accordance with the provisions of section 5 (c) (3). If the landlord fails to file the petition or report required by this paragraph within the time specified, or decreases the services, furniture, furnishings, or equipment without an order authorizing such decrease where such order is required, the rent received by the landlord for any rental period commencing on or after such decrease or the effective date of regulation (or December 1, 1942 where the effective date of regulation is prior to that date), whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by any order decreasing the maximum rent on account of such decrease in services, furniture, furnishings, or equipment. In such case, any order decreasing the maximum rent shall be effective to decrease such rent from the beginning of the first rental period after the decrease in services, furniture, furnishings, or equipment or after the effective date of regulation (or after December 1, 1942 where the effective date of regulation is prior to that date), whichever is the later. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to comply with any requirement of this paragraph.

(c) *Grounds for decrease of maximum rent.* The Administrator at any time on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations under paragraph (c), (d), (e), or (g) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

INTERPRETATION 5 (c) (1)—I. MEASURE OF ADJUSTMENT WHEN FIRST RENT AFTER MAJOR CAPITAL IMPROVEMENT IS HIGHER THAN COMPARABLE RENTS.

1. On maximum rent date L was renting a house for $25 a month. Thereafter, but prior to the effective date of the Housing Regulation, L completed a major capital improvement and then rented the house for $50 a month.

The maximum rent for the house is $50 a month under Section 4 (d) (4) of the Housing Regulation. In a proceeding initiated by the Rent Director under Section 5 (c) (1) to decrease this maximum rent, he finds that the rent generally prevailing in the area on maximum rent date for comparable accommodations without such improvement would have been $20 a month, and with such improvement would have been $35 a month. Hence, the increase in rental value because of the improvement is $15 a month.

The order entered under Section 5 (c) (1) will fix the maximum rent at $40 a month (the rent for the house on maximum rent date—$25—plus the increase in rental value because of the improvement—$15).

2. Assume in the above case that the Rent Director finds that the rent generally prevailing in the area on maximum rent date for comparable accommodations without the improvement would have been $30 a month, and with the improvement would have been $45 a month. Again, the increase in rental value by reason of the improvement is $15 a month.

The order entered under Section 5 (c) (1) will fix the maximum rent at $45 a month.

3. Assume in the case stated in paragraph 1 that the Rent Director finds that the rent generally prevailing in the area on maximum rent date for comparable accommodations without the improvement would have been $40 a month and with the improvement would have been $55.

No decrease in the maximum rent will be ordered under Section 5 (c) (1).

* * * * * * *

Where a maximum rent is established under Section 4 (d) (4) by a first renting after a major capital improvement completed prior to the effective date of the Housing Regulation, the Rent Director is authorized to decrease this maximum rent under Section 5 (c) (1) only if it is higher than the rent generally prevailing in the area on maximum rent date for comparable accommodations, so improved. In the case stated in paragraph 3, the Rent Director will not decrease the maximum rent of $50 a month, since it is less than "comparable rents."

In decreasing a maximum rent established under Section 4 (d) (4), the order will establish a maximum rent which is the higher of these two amounts: (1) The rent generally prevailing in the area for comparable accommodations, including the improvement, on maximum rent date; and (2) The actual rent for the accommodations on maximum rent date plus the difference in rental value, as of that date, by reason of the improvement.

In the case stated in paragraph 2, the first measure of adjustment is controlling. The rent on maximum rent date plus the difference in rental value amounted to $40 a month, whereas the rent on the basis of comparability was $45 a month. The order will fix a maximum rent of $45 a month, that being the higher of the two.

In the case stated in paragraph 1, the second measure of adjustment is controlling. The rent on maximum rent date plus the difference in rental value amounted to $40 a month, whereas the rent on the basis of comparability was $35 a month. The order will fix a maximum rent of $40 a month, that being the higher of the two.

(Issued October 26, 1942; revised May 15, 1943.)

[Sec. 5. ***Adjustments and other determinations.*** * * * (c) ***Grounds for decrease of maximum rent.*** **The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:]**

(2) *Substantial deterioration.* There has been a substantial deterioration of the housing accommodations other than ordinary wear and tear since the date or order determining its maximum rent.

(3) *Decrease in services, furniture, furnishings or equipment.* There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent.

(4) *Special relationship between landlord and tenant.* The rent on the date determining the maximum rent was materially affected by the blood, personal, or other special relationship between the landlord and the tenant and as a result was substantially higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(5) *Varying rents.* The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a substantially lower rent at other periods during the term of such lease or agreement.

See: Situations in which adjustments under Section 5 (c) (5) may be proper: Interpretation M. R. VIII, p. 23; Interpretation 4 (a)—I, p. 29.

(6) *Seasonal rent.* The rent on the date determining the maximum rent was substantially higher than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

See: Application of Section 5 (c) (6) discussed; Interpretation 5 (a) (7)—I, paragraphs 1 (c) and 2 (b), p. 62.

(7) *Substantial decrease in occupancy.* There has been a substantial decrease in the number of subtenants or other occupants since an order under paragraph (a) (8) or (c) (8) of this section.

(8) *Rent established under Section 4 (i).* The maximum rent is established under Section 4 (i) and is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date, taking into considration any increased occupancy of such accommodations

since that date by subtenants or other persons occupying under a rental agreement with the tenant: *Provided*, That no decrease shall be ordered below the rent on the maximum rent date.

(d) *Orders where facts are in dispute, in doubt, or not known.* If the rent on the date determining the maximum rent, or any other fact necessary to the determination of the maximum rent, is in dispute between the landlord and the tenant, or is in doubt, or is not known, the Administrator on petition of the landlord filed within 30 days after the effective date of regulation, or at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact; or if the Administrator is unable to ascertain such fact he shall enter the order on the basis of the rent which he finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

Situations in which proceedings under Section 5 (d) are appropriate: Interpretation 1 (a)—I, p. 2; Interpretation M. R.—III, p. 19; Interpretation M. R.—V, paragraphs 1 and 3, p. 21; Interpretation 4 (d)—I, p. 35; Interpretation S. L.—II, paragraphs 1 and 3, pp. 98, 99.

(e) *Sale of underlying lease or other rental agreement.* Where housing accommodations or a predominant part thereof are occupied by one or more subtenants or other persons occupying under a rental agreement with the tenant, the tenant may petition the Administrator for leave to exercise any right he would have except for this regulation to sell his underlying lease or other rental agreement. The Administrator may grant such petition if he finds that the sale will not result, and that sales of such character would not be likely to result, in the circumvention or evasion of the Act or this regulation. He may require that the sale be made on such terms as he deems necessary to prevent such circumvention or evasion.

(f) *Interim orders.* Where a petition is filed by a landlord on one of the grounds set out in paragraph (a) of this section, the Administrator may enter an interim order increasing the maximum rent until further order, subject to refund by the landlord to the tenant of any amount received in excess of the maximum rent established by final order upon such petition. The receipt by the landlord of any increased rent authorized by such interim order shall constitute an agreement by the landlord with the tenant to refund to the tenant any amount received in excess of the maximum rent established by final order. The landlord shall make such refund either by repayment in cash or, where the tenant remains in occupancy after the effective date of the final order, by deduction from the next installment of rent, or both.

(g) *Adjustments in case of options to buy.* No adjustment in the maximum rent shall be ordered on the ground that the landlord, since the date or order determining the maximum rent, has, as a part of or in connection with a lease of housing accommodation, granted the tenant an option to buy the accommodations which are the subject of the lease. Where a lease of housing accommodations was in force on the date determining the maximum rent, and the landlord had on that date, as a part of or in connection with such lease, granted the tenant an option to buy the accommodations which are the subject of the lease, the Administrator may, on or after the termination of such lease, on his own

initiative or on application of the tenant, enter an order fixing the maximum rent on the basis of the rents which the Administrator finds were generally prevailing in the defense-rental area for comparable housing accommodations not subject to an option to buy on the maximum rent date.

See: Application of this paragraph discussed: Interpretation 2 (c)—I, paragraphs 1 (a), 3, and 4 (a), pp. 13–16.

Sec. 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

NOTE.—Certain general effects of the restrictions on evictions contained in Section 6 are discussed before the consideration of particular paragraphs of that Section. This group is referred to as Interpretation 6, with the appropriate Roman numerals.

INTERPRETATION 6—I. EFFECT OF REGULATION ON PENDING EVICTION PROCEEDINGS.

Where an action to evict is pending on the date the Regulation becomes effective in a particular Defense-Rental Area, the provisions of Section 6 are applicable unless a court order has been entered prior to the effective date of the Regulation directing the tenant to surrender possession. If such an order has been entered, the court may use its ordinary processes for enforcement of such order and the landlord may request such processes. If no such order has been entered, the landlord may not further pursue his proceedings except in accordance with Section 6.

ILLUSTRATIONS

Assume the effective date of the Regulation is June 1, 1942. On April 30, 1942 B occupies housing accommodations under a lease with A, the landlord, and on that date the lease terminates. On May 1, B tenders rent for the month of May which A refuses to accept. A institutes eviction proceedings in accordance with local law. On May 29, 1942, A secures judgment for possession. B is still in possession on June 1, 1942. A may thereafter seek enforcement of the judgment pursuant to local law without reference to the grounds of eviction set forth in Section 6 of the Regulation.

Assume the same facts, except that on May 31, 1942 judgment for possession has not as yet been entered. The landlord must comply not only with local law but also with Section 6 of the Regulation, and may not further prosecute his proceeding unless he has grounds of eviction under said section.

(Issued May 29, 1942; revised May 15, 1943.)

INTERPRETATION 6—II. MEANING OF "TENANT."

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

1. On July 1, 1941 L leases a house to T for one year. The lease expires on June 30, 1942 and T remains in possession without any new rental agreement with L.

The provisions of Section 6 apply and T may be removed only pursuant to that section. According to the explicit language of the first paragraph of Section 6 (a), its restrictions apply to a tenant "notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated." It may be that under local law in the absence of Section 6 there would be no tenancy relationship between L and T; nonetheless, T came into possession as a tenant and remains a tenant for purposes of Section 6.

2. L owns a house which is vacant on July 1, 1942. On that date X moves into the house as a trespasser. L accepts no rent from X and does not otherwise act to establish a tenancy relationship.

X is not a tenant within the meaning of Section 6 and may be evicted pursuant to local law without regard to that section.

3. On August 1, 1941, L mortgages his house to X. On November 1, 1941 L rents the house to T on a month-to-month basis. On February 15, 1942 X commences foreclosure proceedings and thereafter a foreclosure decree is entered. On August 1, 1942 X purchases the property at foreclosure sale. X then brings suit to evict T, asserting that T is not his tenant and that the provisions of Section 6 do not therefore apply.

The provisions of Section 6 apply even though there is no tenancy relationship between X and T under local law. T came into possession of the property as a tenant and, as in the case stated in paragraph 1, is a tenant within the meaning of Section 6.

Assume that X has no ground for eviction under Section 6 (a) and files a petition under Section 6 (b). The Rent Director should not issue a certificate merely on the ground that X has not accepted T as his tenant.

4. L owns property under a deed from X which contains a covenant against occupancy by any person "other than a member of the white race." On September 1, 1941 L rents to T who is not a member of the white race on a month-to-month basis. T is in occupancy on August 1, 1942 at which time X brings an action against L and T seeking to enforce the covenant and to dispossess T.

T is a tenant within the meaning of Section 6 and may be dispossessed only pursuant to the provisions of that section.

(Issued October 6, 1942.)

INTERPRETATION 6—III. MORTGAGOR AS TENANT.

On January 10, 1941 an action was commenced to foreclose a mortgage executed by B as mortgagor. On January 30, 1941 a receiver was appointed under an order entered in the foreclosure suit. This order provided that B was to remain in occupancy until six months after final decree of foreclosure, at a rent of $5 a month. The rent

for comparable accommodations in the defense-rental area on the maximum rent date was $45. B was in occupancy under this decree on the maximum rent date.

Whether B is a tenant depends on the local law as to the legal relationship between mortgagor and mortgagee pending foreclosure proceedings. Until B's title to the property has been divested in the foreclosure proceedings he is an occupant of his own property.

(Issued August 14, 1942.)

INTERPRETATION 6—IV. RENT "TO WHICH THE LANDLORD IS ENTITLED."

1. On April 1, 1941 a house is rented to T for $50 a month. The lease expires on August 1, 1941 and a new lease for one year is made with T, providing for a rent of $45 a month. On July 15, 1942 L tenders to T and demands that he sign a one-year lease, on the same terms as the lease which will expire July 31, 1942, except that it provides for a rent of $50 a month, the maximum rent.

T refuses to sign the new lease and L brings action to evict under Section 6 (a) (1). T's refusal is not ground for eviction under that provision, since the proffered lease calls for a higher rent than the expiring lease and therefore is not on the same terms and conditions. The fact that the rent provided in the new lease is not in excess of the maximum rent makes no difference on the applicability of Section 6 (a) (1). Nonetheless, on expiration of the old lease on July 31, 1942, L is entitled to demand $50 a month for the premises. If T will not pay $50 a month he may be evicted for failure to pay the rent to which L "is entitled" (see the opening paragraph of Section 6). Within the meaning of Section 6, L is entitled to the rent fixed under the rental agreement or, in the absence of such an agreement, the maximum rent.

(Issued September 26, 1942.)

2. Assume the effective date of the Regulation is June 1, 1942. L owns a house which was rented on the maximum rent date for $25 a month. On April 1, 1942 L rented the house to T for six months at a monthly rent of $30. T paid the rent due on April 1, but failed to pay the rent due on May 1. In June 1942 L served on T a notice to quit the premises. T at once tendered to L $25 in cash, the amount of the maximum rent due on June 1, 1942. L rejected the tender and started an action to evict T on June 15, 1942.

L's eviction proceeding does not constitute a violation of the Regulation. Section 1 (d) provides that "A tenant shall not be entitled by reason of this Regulation to refuse to pay * * * any portion of any rents due * * * for use or occupancy prior to (the effective date)." Section 6 (a) in its restrictions on evictions commences with the phrase, "So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant, etc." A continuing failure to pay rent to which the landlord is entitled for a period of occupancy prior to the effective date (which in the above case was $30 for May) will justify an eviction, if the court before which the action is brought finds the facts to be established.

(Issued August 14, 1942; revised May 15, 1943.)

3. Assume the effective date of the Regulation is June 1, 1942. On that date T occupies a house as a tenant from month to month of O, the owner. T defaults in payment of the rent for the month of June. On July 1, 1942, O sells the house to L. T pays the July rent, due July 1, to L, who accepts this rent. On August 1, L notifies T to surrender possession of the house at the end of the month. L claims that the provisions restricting removal of tenants do not protect T for the reason that he has not paid the rent for June.

On these facts L may not evict T for non-payment of rent due to O. Under Section 6 (a) of the Regulation a tenant may not be evicted so long as he continues to pay the rent "to which the landlord is entitled." L is the only landlord of the premises, within the meaning of this section, after the transfer of title to him on July 1, 1942. The transfer of title does not normally transfer to L the right to receive rents which became due and payable before the date of the transfer. T may not be evicted by L for non-payment of rent so long as he is not in default with respect to rent due to L, and it is clear that there is no such default unless the right to receive the June rent has been assigned from O to L. In the event that such an assignment of the right to the June rent were made to L, it becomes rent to which L is entitled within the meaning of Section 6 and that section does not prohibit eviction. However, there would still remain a question whether under local law such an assignment would carry with it the right to evict from the premises for non-payment of the rent obligation involved.

(Issued September 4, 1942.)

INTERPRETATION 6—V. WHAT CONSTITUTES EVICTION.

(1) Assume that L is entitled to possession of housing accommodations under the local law, although T continues to pay the rent to which L is entitled. In order to recover possession of such accommodations for immediate use and occupancy as a dwelling by himself, L threatens to evict T by force, thereby inducing T to vacate the premises. Within six months after T's removal L desires to rent such accommodations.

T was removed or evicted within the meaning of Section 6 (a) (6) and if L rents the accommodations within the six months' period he is required by that section to file a written report prior to such renting. Section 6 (a) prohibits removals or evictions of a tenant, whether by court process or otherwise, except in accordance with the requirements of that section.

(2) Assume the facts of (1) except that L, relying upon his right under Section 6 (a) (6), institutes legal proceedings to oust T by service of a summons, stating in the written notice filed in accordance with the requirement of Section 6 (d) that the ground for the proceedings is L's intention to occupy the premises himself. Before L recovers a judgment T, who is aware of L's right under the Regulation and desires to avoid further legal proceedings, vacates the premises. There is an eviction or removal within the meaning of Section 6 (a) (6), so that prior to renting the premises within 6 months a report of such renting will be required.

(3) Assume the facts of (1) except that L informs T that he intends to bring an action to recover possession under Section 6 (a) (6) for the purpose of immediate occupancy as a dwelling for himself. T, who is aware of L's right under the Regulation, vacates the premises in order to avoid legal proceedings. There is an eviction or removal within the meaning of Section 6 (a) (6), so that prior to renting the premises within 6 months a report of such renting will be required.

If L, without specific reliance on a ground for eviction provided by the Regulation and without indicating an intention to enforce his right to secure possession by legal action, merely requests T to vacate, a voluntary surrender of possession by T would not constitute a removal or eviction within the meaning of the Regulation. Although an agreement by T to waive the benefit of the Regulation is void (Section 1 (d)), T may vacate voluntarily and a request by L that he do so does not in itself constitute a removal or eviction or an "attempt" to remove or evict. For a removal or eviction to occur within the meaning of Section 6, it must be found that L's assertion of his intent to compel T to vacate induced the surrender of possession.

(Issued September 16, 1942; revised May 15, 1943.)

[Sec. 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations * * * unless:]

(1) *Tenant's refusal to renew lease.* The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration but not in excess of one year but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this regulation; or

See: When lease providing for increase in rent is on "same terms and conditions": Interpretation 6—IV, paragraph 1, p. 71.

INTERPRETATION 6 (a) (1)—I. DATE OF DEMAND FOR RENEWAL.

This paragraph does not prescribe the period, prior to expiration of a written lease, within which a demand for signature of a written renewal lease can be made. It is evident that such demand can be made sometime prior to the moment at which the first lease actually expires. How much earlier it may be made, with refusal of the tenant to sign providing a ground for eviction, must depend on the character of the housing accommodations involved and the need of the landlord for opportunity to arrange for a new tenancy. Where the lease provides for monthly rent payments, a period of one month would ordinarily be a reasonable period for this purpose. Somewhat more than one month could under some circumstances be considered reasonable, particularly if local renting practices providing such period were clearly established. However, if the demand of the landlord were made at an unreasonably early stage, the tenant could refuse to sign and no ground for eviction under Section 6 (a) (1) would exist through such refusal.

If the demand for signature of a written lease is made after the expiration of the lease whose extension or renewal is requested, no ground for eviction under Section 6 (a) (1) will arise through the tenant's refusal to sign. The restrictions of Section 6 apply notwith-

standing the expiration or termination of the lease under which the tenant entered into occupancy. It was not intended to provide in Section 6 (a) (1) a right to demand the signature of a written lease during a period, left undefined, after expiration of the prior lease. This is particularly indicated by the use of the terms "extension or renewal," which would not be appropriate where the demand is made after the expiration of the original lease.

(First paragraph issued August 27, 1942; second paragraph issued October 22, 1942; revised May 15, 1943.)

[Sec. 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant contines to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations * * * unless:]

(2) *Tenant's refusal of access to landlord.* The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: *Provided, however,* That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

INTERPRETATION 6 (a) (2)—I. WHEN REFUSAL TO PERMIT ACCESS IS CONTRARY TO RENTAL AGREEMENT.

(1) On the effective date of the Regulation L is renting property to T under a written lease which will expire on September 1, 1942. The written lease contains no provision relative to L's right of access to the house for the purpose of inspection or showing the property to a prospective purchaser or other interested person. Under the local law a landlord has no such right of access in the absence of a specific provision in the lease or other rental agreement giving the right. On August 2, 1942 L requests T to permit L to show the house to a prospective purchaser. T refuses such request. L then brings action to evict T relying upon Section 6 (a) (2).

The provision relied upon does not permit eviction under the foregoing circumstances. For the purposes of Section 6 (a) (2) the local law is a part of the lease and, therefore, access to the property for the purpose of showing it to a prospective purchaser is "contrary to the provisions of the tenant's lease."

(2) Assume in the case stated in paragraph 1 that T remains in occupancy of the property after the lease expires but that no new express lease or other rental agreement is made between L and T. On September 15 L again requests T to permit access to the property for the purpose stated above and again T refuses such access. L again commences action to evict in reliance upon Section 6 (a) (2).

Under these circumstances Section 6 (a) (2) permits eviction of T. T has remained in occupancy by virtue of the provisions of Section 6, and that section, in effect, makes the landlord's right of access one of the terms of this new tenancy.

However, if on expiration of the old lease L and T enter into a new lease or other rental agreement, the terms of that lease or agreement

control. If the new lease explicitly denies L the right of access, L may not evict T on the basis of Section 6 (a) (2) because of T's refusal to permit access. If the new lease is silent on the question, the result depends on local law as set out in paragraph 1.

(Issued September 4, 1942.)

[Sec. 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations * * * unless:]

(3) *Violating obligation of tenancy or committing nuisance.* The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

See: Eviction where tenant maintains house of prostitution: Interpretation 6 (b) (2)—II, p. 85.

(4) *Subtenants on expiration of tenant's lease.* The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons who occupied under a rental agreement with the tenant, and no part of the accommodations is used by the tenant as his own dwelling; or

INTERPRETATION 6 (a) (4)—I. OCCUPANCY OF PART OF PREMISES BY TENANT.

Assume the effective date of the Housing Regulation is July 1, 1942.

1. On June 1, 1942 L leased a house to T for a term of one year. Thereafter, T left the city and sublet the entire house to S. When the lease between L and T expires on May 31, 1943 the house is occupied by S. On expiration of the lease L brings a court action to evict T, relying on Section 6 (a) (4) of the Housing Regulation, as amended on March 1, 1943 by Supplementary Amendment No. 15.

Section 6 (a) (4), as amended, permits eviction under these circumstances, since, at the time of termination of the lease, the "occupants of the housing accommodations are subtenants or other persons who occupied under a rental agreement with the tenant, and no part of the accommodations is used by the tenant as his own dwelling."

2. Assume in the above case that T sublet the upstairs of the house to A and the remaining portion of the house to B. On expiration of the lease between L and T, Section 6 (a) (4), as amended, permits the eviction of T.

3. On June 1, 1942 L leased a ten-room house to T for a term of one year. When the lease expires on May 31, 1943, T is using the house as a rooming house but is not living on the premises. At that time eight of the rooms are rented to roomers and the remaining two rooms are vacant. Section 6 (a) (4), as amended, permits the eviction of T on expiration of the lease, since the only occupants of the house at that time are subtenants and no part of the house is used by T as his own dwelling.

4. On June 1, 1942 L leased a seven-room house to T for a one-year term. T lives in three rooms and rents the remaining four rooms to

roomers. This condition exists when T's lease expires on May 31, 1943.

Prior to March 1, 1943, Section 6 (a) (4) of the Housing Regulation permitted eviction of T on expiration of his lease if the four rooms which were then sublet constituted a predominant part of the house. As a result of Supplementary Amendment No. 15, eviction of T on expiration of his lease is no longer permitted by Section 6 (a) (4).

5. On June 1, 1942 L leased a 60-room hotel to T for a term of one year. When the lease expires on May 31, 1943 all of the rooms in the hotel are either rented or offered for rent by T.

The hotel structure is not subject to the rent regulations [Section 1 (b) (4) of the Housing Regulation], and when T's lease expires he may be evicted by L free of the restrictions placed on eviction by Section 6 of those regulations.

(Issued March 1, 1943.)

[Sec. 6. *Removal or tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations * * * unless:]

(5) *Demolition or alteration by landlord.* The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the housing accommodations or of substantially altering or remodeling it in a manner which cannot practically be done with the tenant in occupancy and the plans for such alteration or remodeling have been approved by the proper authorities, if such approval is required by local law; or

See: Application of this paragraph discussed in Interpretation 6 (b) (1)—IV, p. 82.

(6) *Occupancy by landlord.* The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the effective date of regulation (or prior to October 20, 1942 where the effective date of regulation is prior to that date, or prior to November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area), and seeks in good faith to recover possession of such accommodations for immediate use and occupancy as a dwelling for himself. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

INTERPRETATION 6 (a) (6)—I. EARLIER PROVISIONS.

Supplementary Amendment No. 7, effective October 20, 1942, added Section 6 (b) (2) to the Housing Regulations in effect on that date and amended Section 6 (a) (6). On the same date Supplementary Amendment No. 3A amended Section 6 (a) (5) of the Hotel Regulation. Section 6 (a) (6) in its original form permitted an eviction where the landlord sought to occupy the premises as a dwelling "by himself, his family or dependents." The present restriction of that section to cases where the landlord desires occupancy for himself will necessitate a proceeding under Section 6 (b) (1) where occupancy is desired for members of the landlord's family or dependents.

The restriction of Section 6 (a) (6) to landlords who "owned, or acquired an enforceable right to buy or the right to possession" of housing accommodations prior to October 20, 1942 will necessitate an application for an eviction certificate by purchasers whose rights are acquired on or after that date. See Interpretations of Sections 6 (b) (2) and 6 (b) (1).

For the above reasons October 20 is the decisive date in the application of Section 6 (a) (6) in those areas where Regulations were in effect prior to October 20. In those areas where Regulations were not effective until after October 20 the decisive date is the effective date of the Regulation.

(Issued May 15, 1943.)

INTERPRETATION 6 (a) (6)—II. EVICTION FOR SELF-OCCUPANCY BY PURCHASER WHO ACQUIRES RIGHTS PRIOR TO OCTOBER 20, 1942.[1]

On October 1, 1942, L enters into a valid contract with V by which he agrees to buy a house owned by V, and occupied by T. The contract provides that the sale is to be closed on November 1, 1942, with delivery of a good merchantable title, making of the down payment, execution of a purchase money mortgage etc. to take place on that date. The contract contains no provision for "acceleration" so that under its terms and local law L, the purchaser, cannot force V to transfer title prior to November 1, 1942. On November 1, 1942 the sale is closed and title passes to L. L then files a court action to evict T, under Section 6 (a) (6), seeking in good faith to recover possession for his own occupancy.

Section 6 (a) (6) permits eviction in this case. Within the meaning of that provision, L acquired an "enforceable right to buy" the house on October 1, 1942.

(Issued January 9, 1943.)

INTERPRETATION 6 (a) (6)—III. EVICTION BY VENDOR FOR OCCUPANCY BY PURCHASER WHO ACQUIRES RIGHTS PRIOR TO OCTOBER 20, 1942.[1]

Assume that the effective date of the Housing Regulation is June 1, 1942. On October 10, 1942, A, the owner of a house which was rented to T, entered into a written contract to sell the house to B, who intends to use the house as a dwelling for himself. The contract stipulated that A would deliver vacant possession to B, and provided that, when this condition was met, B would pay 20% of the purchase price, the balance to be paid in monthly installments. Title was to pass when the 20% down payment was made. Under local law B has no right to possession on these facts until title passes, and cannot maintain an action to evict or otherwise recover possession from T. On November 1, 1942, A commenced a court action to evict T, relying upon Section 6 (a) (6) of the Housing Regulation.

Section 6 (a) (6) does not permit eviction under these circumstances. As a result of Supplementary Amendment No. 7, effective October 20, 1942, Section 6 (a) (6) now permits eviction only where the landlord "owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to October

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

20, 1942," and seeks in good faith to recover possession "for immediate use and occupancy as a dwelling for himself." The first requirement is satisfied, since A, the plaintiff, owned the house prior to October 20. However, A is seeking to evict, not for his own occupancy, but for occupancy by B, the purchaser. Thus the case does not come within the scope of Section 6 (a) (6).

In this situation A may petition for a certificate under Section 6 (b) (1). The issuance of the certificate will depend upon the good faith of the entire transaction.

B's inability to evict under Section 6 (a) (6) in this case results from the fact that, under his contract, he does not have rights which entitle him to maintain an action under local law to remove T. If B gains such rights, as probably he can do by making the down payment without insisting on the delivery of vacant possession, he can bring an action under Section 6 (a) (6).

(Issued January 8, 1943.)

INTERPRETATION 6 (a) (6)—IV. EVICTION OF SUBTENANT FOR OCCUPANCY BY SUBLESSOR.

Assume in each of the following cases that the effective date of the Housing Regulation is July 1, 1942.

1. L leased a house to T on February 1, 1942 under a written lease for a term of two years. On June 1, 1942 T sublet to S under an oral month-to-month agreement. On November 1, 1942 T gave S notice to vacate on December 1, 1942, on the ground that T desired to occupy the house himself.

T may evict S under Section 6 (a) (6) of the Housing Regulation, since within the meaning of that provision T acquired "the right to possession" prior to October 20, 1942.[1]

2. Assume that L leased a house to T on November 1, 1942 for a term of one year and that T sublet to S on December 15, 1942. If T desires to occupy the house himself, Section 6 (a) (6) will not permit eviction of S, since T acquired his right to possession after October, 20, 1942.[1] However, a certificate will be given T under Section 6 (b) (1) if T establishes that he intends in good faith to occupy the accommodations.

(Issued May 15, 1943.)

INTERPRETATION 6 (a) (6)—V. EVICTION BY SECOND TENANT.

Assume that the effective date of the Housing Regulation is June 1, 1942. On January 1, 1942 L rents a house to T on a month-to-month basis and T is in occupancy on that basis on November 1, 1942. On the latter date, with T in occupancy, L executes a one-year lease of the house to X for a term to commence on November 1, 1942. At the same time L assigns to X his claim to rent due and to become due from T. On December 1, 1942 T pays rent to X. Thereafter, X seeks to evict T.

Under the provisions of section 6, as amended by Supplementary Amendment No. 7 effective October 20, 1942, a landlord who acquires the right to possession on or after October 20[1] and seeks to recover possession for his own occupancy can no longer proceed under section

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

6 (a) (6) but must petition for a certificate under section 6 (b) (1). Thus X has no remedy under section 6 (a) (6) as amended.

Assume that X petitions for a certificate under section 6 (b) (1). The petition should be denied. A basic purpose of section 6 is to prevent eviction of one tenant simply because the landlord desires to rent to another tenant; evictions under such circumstances will clearly result in evasions of the Regulation. In the instant case, to permit eviction of T by X would run counter to this purpose. The device of making a lease to X, with T in occupancy, is nothing more than an attempt to substitute one tenant for another. Evictions in cases of this character would be inconsistent with the purposes of the Act and the Regulation and would be likely to result in the circumvention or evasion thereof.

(Issued October 14, 1942.)

INTERPRETATION 6 (a) (6)—VI. EVICTION BY PERSONS WHO HOLD LIMITED INTERESTS.

1. A has a legal life estate in a house, with a legal remainder in fee in B. B brings an action to evict the tenant, asserting that he wants the house as a dwelling for himself, and relying on Section 6 (a) (6) of the Housing Regulation.

Section 6 (a) (6) does not permit eviction in this case. B does not have the right to possession for his own occupancy and thus Section 6 (a) (6) is inapplicable.

2. T is the tenant of a house which is the subject of a trust. Under the local law the trustee has legal title to the house, as well as the right to collect rents. However, he has no beneficial interest in the house and no right to occupy. The trustee holds title in trust for A for his life. The trustee, acting as such, brings an action to evict T, asserting that he wants the house as a dwelling for himself, and relying on Section 6 (a) (6) of the Housing Regulation.

Section 6 (a) (6) does not permit eviction in this case. That provision does not apply to a landlord who does not have the right to possession for his own occupancy.

3 (a). Assume in the case stated in paragraph 2 that A, the beneficiary who has a life interest, brings action, under Section 6 (a) (6), to recover possession as a dwelling for himself. Under local law A has the right to occupy the house for his life (or possibly this right is given expressly by the terms of the trust).

Section 6 (a) (6) permits eviction in this case. A is a landlord for purposes of that provision, since he has the right to possession for his own occupancy. It may be that A cannot maintain an eviction action under local law; however, that is a limitation imposed by such law, not by the Regulation.

(b) Assume in the case just stated that, under local law, the action to recover possession must be brought in the name of the trustee. The trustee brings an action, seeking to recover possession for occupancy as a dwelling by A, the beneficiary.

Section 6 (a) (6) does not permit eviction in this case. Under that provision, action cannot be brought by one person for the purpose of obtaining possession for occupancy by another. The action must be to recover possession "for immediate use and occupancy as a dwelling for himself." Normally, however, a certificate may be issued under

Section 6 (b) (1) where the trustee in good faith seeks possession for occupancy by the beneficiary.

(Issued December 4, 1942.)

[Sec. 6. *Removal of tenant.*]

(b) *Administrator's certificate*—(1) *Removals not inconsistent with Act or regulation.* No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof.

INTERPRETATION 6 (b) (1)—I. GENERAL CONSIDERATIONS REGARDING ISSUANCE OF CERTIFICATES.

Section 6 prohibits evictions except under the circumstances stated therein. Section 6 (a) sets out certain classes of cases in which tenants may be evicted pursuant to local law. Section 6 (a) does not provide that the grounds stated are of themselves grounds for eviction, but it does provide that, if such grounds are present, the right to evict is for the local court to decide under local law. A tenant may be evicted on a ground set out in Section 6 (a) in an action filed directly with the local court. It is not necessary, nor is it contemplated, that the Rent Director issue a certificate in such cases.

The authority given to the Rent Director by Section 6 (b) (1) of the Housing Regulation to issue a certificate permitting the landlord to pursue his eviction remedies under local law is to be exercised in cases where there is no ground for eviction under Section 6 (a). Such a certificate does not indicate that grounds for eviction under local law are present; it merely leaves the landlord free to pursue whatever remedies he may have in the local courts.

Where the landlord seeks to evict a tenant under the provisions of Section 6 (a) he must comply with the notice requirements of Sections 6 (d) (1) and 6 (d) (2) of the Housing Regulation. Where a certificate is issued under Section 6 (b) (1) or 6 (b) (2) the notice provisions of Section 6 (d) (1) do not apply, although the landlord must observe the requirements of Section 6 (d) (2).

Before a certificate will be issued under Section 6 (b) (1) it must appear, not only that the landlord is acting in good faith in the particular case, but also that removals or evictions in that class of cases are not inconsistent with the purposes of the Price Control Act or the Rent Regulation and would not be likely to result in the circumvention or evasion thereof.

(Issued May 15, 1943.)

INTERPRETATION 6 (b) (1)—II. EVICTION WHERE LANDLORD HAS EXECUTED NEW LEASE IN RELIANCE ON TENANT'S NOTICE OF INTENTION TO VACATE.

Assume that the effective date of the Housing Regulation is June 1, 1942. On May 1, 1942 L leased a house to T for three months,

the lease providing that T shall give notice 10 days before the expiration of the lease of an intention to request a renewal of the lease. On July 21, 1942 T notified L in writing that he intended to vacate the premises on July 31, 1942 and L thereupon entered into a written lease for six months with another tenant. On July 26, 1942 T notified L that he had decided to remain in occupancy and refused to vacate on July 31, when his lease expired.

L's reliance on T's notice of intent to vacate does not bring the case within the grounds for eviction specified in Section 6 (a), in the absence of a demand by L for the execution of a written lease and a refusal of T to comply with the demand pursuant to the provisions of Section 6 (a) (1). However, if no other facts appear to indicate that the eviction would be inconsistent with the purposes of the Act or the Regulation or would be likely to result in the circumvention or evasion thereof, a certificate of eviction can be granted under Section 6 (b) (1) on petition to the Area Rent Office.

The same result is reached whether T is in occupancy under a written or an oral agreement and whether or not the lease to the new tenant contains a clause saving L harmless from liability for failure to deliver possession to the new tenant. However, it will be required in any case that T give a clear and unequivocal notice of intent to vacate and in most situations it should appear that this notice by T was in writing. If the rental agreement made by L with the new tenant were oral rather than written, a certificate should ordinarily be denied, though if it clearly appeared that L would be liable in damages under local law, for his failure to deliver possession to the new tenant, a certificate might properly be issued.

The mere failure of T to comply with the provision of the lease, requiring 10 days' notice of intent to request a renewal, would not justify the issuance of a certificate under Section 6 (b) (1).

(Issued August 14, 1942; revised May 15, 1943.)

INTERPRETATION 6 (b) (1)—III. EVICTION WHERE INTERIM TENANT REFUSES TO VACATE.

L owns a house which he has heretofore been occupying. For business reasons he moves from the city in July, 1942. He enters into a two-year lease of the house with A, commencing November 1, 1942. To avoid vacancy during the interval he rents to B on July 15, 1942, with a specific provision in the rental agreement that B shall surrender possession on October 30, 1942.

Assume that B refuses to vacate on October 30, 1942. On the facts stated there is no ground for eviction under 6 (a). L petitions the Rent Director for a certificate under Section 6 (b) (1).

The Rent Director may issue the certificate. Evictions of this character are not inconsistent with the purposes of the Act or Regulation and would not be likely to result in the circumvention or evasion thereof. However, this result cannot be extended to other cases in which the sole ground for eviction is the tenant's agreement to vacate at some indefinite time in the future; such an agreement is in general an agreement to waive the benefit of Section 6 of the Regulation and as such is void under Section 1 (d).

(Issued August 20, 1942; revised May 15, 1943.)

INTERPRETATION 6 (b) (1)—IV. EVICTION FOR PURPOSE OF CHANGING NUMBER OF DWELLING UNITS.

L owns a house which contains two four-room apartments which are now rented to A and B. L desires to change the house into a single-family dwelling unit, which can be done with very slight remodeling and without removal of the tenants. On the facts it is clear that eviction of the tenants cannot be obtained under Section 6 (a) (5). L petitions the Rent Director for a certificate under Section 6 (b) (1).

On these facts, the Rent Director should not issue a certificate. Evictions of this character are inconsistent with the purposes of the Act and Regulation and would be likely to result in circumvention or evasion thereof.

A certificate should likewise be denied where, under similar circumstances L desires to increase the number of dwelling units in the structure by decreasing the size of some or all of the existing units.

(Issued August 15, 1942; revised May 15, 1943.)

INTERPRETATION 6 (b) (1)—V. EVICTION TO CHANGE ACCOMMODATIONS FROM UNFURNISHED TO FURNISHED.

1. L is presently renting an unfurnished apartment to T. L desires to place furniture in the apartment, but T has his own furniture and will not agree to renting the apartment furnished. L petitions the Rent Director for issuance of a certificate under Section 6 (b) (1), in order to evict T and change to a furnished apartment.

On these facts, the Rent Director should not issue a certificate. Evictions of this character are inconsistent with the purposes of the Act and Regulation and would be likely to result in circumvention or evasion thereof.

However, additional facts may justify a different result, as indicated by the following paragraph.

2. L owns two apartment buildings in which he rents both furnished and unfurnished apartments. L loses one of the apartment buildings on foreclosure, but still owns the furniture which had been used in some of the apartment units in that building. He now desires to use this furniture in furnishing some of the unfurnished apartments in the second building. Unless L is able to use the furniture in this manner he will suffer a substantial loss. T rents an unfurnished apartment in this second building and, having his own furniture, he will not agree to rent the apartment furnished. T has no lease or other rental agreement which will be violated if L forces him to rent the apartment furnished. L petitions the Rent Director for a certificate under Section 6 (b) (1).

The Rent Director may issue a certificate. Here the additional facts point to the conclusion that L has compelling business reasons for furnishing the apartment. Evictions in this limited class of cases are not inconsistent with the purposes of the Act or Regulation and would not be likely to result in circumvention or evasion thereof.

Even though a case appears to come within a general class of cases in which a certificate may be issued, it should be borne in mind that the Rent Director will make a decision only after full ascertainment of the facts. Facts in addition to those set out above may throw a new light on the problem and may indicate that a certificate should not be issued. In particular, if there is reason to believe that the landlord is seeking

an eviction in order to evade the maximum rents established by the Regulation, a certificate should not be issued.

(Issued August 15, 1942.)

INTERPRETATION 6 (b) (1)—VI. EVICTION BY OWNER ACQUIRING RIGHTS BY GIFT AFTER OCTOBER 20, 1942.

Assume that the effective date of the Regulation is July 1, 1942. L, who owns housing accommodations which are rented to T, on November 15, 1942 conveys the property clear of all encumbrances by way of gift to X, his son. X desires to occupy the accommodations himself, and petitions for an eviction certificate.

The certificate should be granted under Section 6 (b) (1), if it is found that X desires in good faith to occupy the premises himself. Section 6 (a) (6) does not authorize eviction by court action, since X did not acquire ownership or the right to possession of the accommodations prior to October 20, 1942. The requirements of Section 6 (b) (2) do not apply, since X is not a "purchaser" and the transaction through which his ownership was acquired was not a sale.

The same result will be obtained where a gift is made after the effective date of the Regulation in those areas brought under control after October 20, 1942.

(Issued May 15, 1943.)

[Sec. 6. *Removal of tenant.* * * * (b) *Administrator's certificate.*]

(2) *Occupancy by purchaser.* Removal or eviction of a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of regulation (or on or after October 20, 1942 where the effective date of regulation is prior to that date, or on or after November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area) is inconsistent with the purposes of the Act and this regulation and would be likely to result in the circumvention or evasion thereof, unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, aggregate 33⅓% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purposes of this paragraph (b) (2), the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate.

In no other case shall the Administrator issue a certificate for occupancy by a purchaser who has acquired his rights in

the housing accommodations on or after the effective date of regulation (or on or after October 20, 1942 where the effective date of regulation is prior to that date, or on or after November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area) unless he finds (i) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without removal or eviction of the tenant, or (ii) that other special hardship would result, or (iii) that equivalent accommodations are available for rent, into which the tenant can move without substantial hardship or loss; under such circumstances the payment by the purchaser of 33⅓% of the purchase price shall not be a condition to the issuance of a certificate, and the certificate may authorize the vendor or purchaser, either immediately or at the expiration of three months, to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law.

INTERPRETATION 6 (b) (2)—I. HISTORY OF PROVISION AND RELATION TO SECTIONS 6 (a) (6) AND 6 (b) (1).

Supplementary Amendment No. 7, effective October 20, 1942, added Section 6 (b) (2) to the Housing Regulations in effect on that date and amended Section 6 (a) (6). Supplementary Amendment No. 14, effective February 15, 1943, amended Section 6 (b) (2). Supplementary Amendment No. 7 restricts evictions of tenants which result from sales occurring on or after October 20, 1942. For this reason October 20, 1942 is the decisive date in the application of Section 6 (a) (6) and Section 6 (b) (2) in those areas where Regulations were effective prior to that date. In those areas where Regulations were not effective until after October 20 the decisive date is the effective date of the Regulation. The following discussion assumes that the Regulation was effective prior to October 20, 1942. In an area where the Housing Regulation became effective after October 20, 1942, the words "the effective date of the Regulation" should be substituted for "October 20, 1942" in the following discussion.

The restrictions of Section 6 (b) (2) apply only where the sale of housing accommodations results in eviction of a tenant of the vendor. No limitations are imposed on the sale of vacant accommodations or of accommodations occupied by a tenant where no eviction will result. Where a person acquires ownership of tenant-occupied property by gift, devise or descent on or after October 20, 1942, and such person desires to evict the tenant for occupancy by himself, Section 6 (a) (6) does not permit eviction since that provision is limited to eviction by a person who acquired his rights in the housing accommodations (whether by purchase or otherwise) prior to October 20, 1942. The proper procedure in such case is to petition for a certificate under Section 6 (b) (1). (See Interpretation 6 (b) (1)—VI.)

Where a purchaser acquired ownership or an enforceable right to buy the accommodations prior to October 20, 1942, he may recover possession for his own occupancy under Section 6 (a) (6). Section 6 (b) (2) does not apply (Interpretation 6 (a) (6)—II). However, in such case the vendor may not evict his tenant for occupancy by the

purchaser under Section 6 (a) (6). Although the vendor had rights in the accommodations prior to October 20, 1942, he is seeking to evict, not for his own occupancy, but for occupancy by the purchaser, and this is not permitted by Section 6 (a) (6). The vendor may petition for a certificate under Section 6 (b) (1) and the issuance of the certificate will depend upon the good faith of the entire transaction. (See Interpretation 6 (a) (6)—III.)

Where either vendor or purchaser seeks to evict a tenant of the vendor for occupancy by a purchaser who acquired his rights in the housing accommodations on or after October 20, 1942, it is necessary to file a petition under Section 6 (b) (2) for a certificate authorizing the vendor or purchaser to pursue his remedies for eviction in accordance with the requirements of local law. Except as stated below the certificate will not be granted unless the purchaser has paid at least 33⅓% of the principal excluding any payments made by the purchaser from funds borrowed for the purpose of making such payments and three months must elapse after the issuance of a certificate before the tenant may be evicted. The purchaser may not wish to pay unconditionally the full amount of the required payments, without any assurance that the transaction will provide ground for securing occupancy after the three months' period of delay. For this reason Section 6 (b) (2) provides that the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in case the Rent Director denies the petition for a certificate.

The Rent Director is authorized to issue a certificate although the one-third payment requirement is not satisfied where he finds (1) that the vendor has a "substantial necessity" requiring sale and that a reasonable sale cannot be made without eviction of the tenant, or (2) that other special hardship would result, or (3) that equivalent accommodations are available for rent into which the tenant can move without substantial hardship or loss. In such cases the certificate may authorize the vendor or purchaser to pursue his local eviction remedies immediately, or it may contain the three months waiting period.

(Issued May 15, 1943.)

INTERPRETATION 6 (b) (2)—II. WHERE PURCHASER HAS GROUND FOR EVICTION UNDER SECTION 6 (a).

After October 20, 1942,[1] L buys a house which is then rented to T, L paying 10% of the purchase price in cash and agreeing to pay the balance in monthly installments. Thereafter T, who has remained in occupancy, begins to use the house as a house of prostitution. L brings a court action to evict T under Section 6 (a) (3) of the Regulation.

Section 6 (a) (3) permits eviction in this case. Where the provisions of Section 6 (a) apply, they permit eviction by a purchaser who acquired his rights after October 20, 1942 (or the effective date of the Regulation where that is the decisive date) even though the requirements of Section 6 (b) (2) are not satisfied.

(Issued January 9, 1943.)

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

INTERPRETATION 6 (b) (2)—III. PAYMENT REQUIREMENTS OF SECTION 6 (b) (2).

Meaning of "Purchase Price."—1. After October 20, 1942,[1] L buys a house which he intends to occupy, paying $1,000 in cash and assuming a $3,000 mortgage indebtedness. L thereupon petitions for a certificate under Section 6 (b) (2) in order to secure possession for his own occupancy. Since L acquired his rights after October 20, 1942, a certificate will not be issued under that provision unless "the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose, aggregate 33⅓% of the purchase price."

The petition should be denied, since less than one-third of the purchase price has been paid. The purchase price includes the amount of the mortgage debt assumed by L and is therefore $4,000.

Payment with borrowed funds.—2. After October 20, 1942,[1] L buys a house which he intends to occupy, paying $2,000 in cash and agreeing to pay $2,000, the balance of the purchase price, in monthly installments. In order to make the $2,000 down payment, L borrows that sum giving as security a mortgage on another house which he owns. L petitions for a certificate under Section 6 (b) (2), seeking possession for his own occupancy.

The petition should be denied, since the $2,000 payment on principal was made "from funds borrowed for the purpose" of making such payment.

(Issued December 5, 1942.)

INTERPRETATION 6 (b) (2)—IV. "DOWN" PAYMENT NOT REQUIRED.

After October 20, 1942,[1] L purchases for his own occupancy a house which is rented to T, pays 25% of the purchase price in cash, and agrees to pay the balance of the purchase price in monthly installments. The monthly installments cover the interest on the unpaid principal and also include payments on principal.

As of the time of purchase, L is not entitled to a certificate under Section 6 (b) (2), since he has paid less than one-third of the purchase price. However, when, by reason of the subsequent monthly payments, A has brought his principal payments up to one-third of the purchase price, he is entitled to a certificate in order to recover possession for his own occupancy. The certificate will authorize L to pursue his remedies under local law at the expiration of three months after the date of issuance of the certificate.

(Issued November 30, 1942.)

INTERPRETATION 6 (b) (2)—V. SERVICE OF EVICTION NOTICE PRIOR TO EXPIRATION OF THREE-MONTHS' PERIOD.

After October 20, 1942,[1] V sells a house to L who pays one-third of the purchase price in cash. At the time of sale the house is rented to T on a month-to-month basis. L petitions the Rent Director for a certificate under Section 6 (b) (2). The Rent Director, pursuant to that provision, issues a certificate authorizing the purchaser to pursue his remedies for removal or eviction of T in accordance with the require-

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

ments of local law at the expiration of three months after the date of issuance of the certificate.

Under local law it is necessary for L to give one month's notice in order to terminate the month-to-month tenancy and give B the right to possession. L inquires whether he may, during the three-month period, give T a notice to vacate at the expiration of such period. The Regulation permits the giving of such a notice. This is not considered the "pursuit of B's remedies" under local law within the meaning of Section 6 (b) (2). However, the notice must not require a surrender of possession prior to expiration of the three-month period.

(Issued November 30, 1942.)

INTERPRETATION 6 (b) (2)—VI. PURCHASE OF MULTIPLE-DWELLING STRUCTURES.

On and after October 20, 1942, the effective date of Supplementary Amendment No. 7 (or, on or after the effective date of the Regulation, in an area where the Housing Regulation became effective November 1, 1942, or thereafter), L purchases a twelve-unit apartment building, paying $15,000 cash and assuming a $60,000 mortgage debt. L then petitions for a certificate under Section 6 (b) (2) in order to evict T from one of the apartments which L desires to occupy. L is not at present living in the apartment building.

The purchase price is $75,000, and thus the payment requirements of Section 6 (b) (2) are not satisfied (see Interpretation 6 (b) (2)—III, paragraph 1). A certificate may be issued in this case on the basis of special hardship, since inability to occupy one of the apartments will interfere with L's management or supervision of the structure. If the certificate is issued it may provide for the three-months' waiting period (Section 6 (b) (2), as amended by Supplementary Amendment No. 14, effective February 15, 1943).

The hardship on the landlord will in general depend on the number of dwelling units in the structure. Where this number is substantial the advantage to the landlord in management or supervision of the operation warrants the issuance of a certificate. Usually, however, in the case of smaller structures these considerations of management and supervision will be of less weight and a certificate will not ordinarily issue because of these factors alone.

(Issued May 15, 1943.)

INTERPRETATION 6 (b) (2)—VII. NECESSITY FOR GIVING NOTICE PURSUANT TO SECTION 6 (d).

Where a certificate is issued under Section 6 (b) (2) the notice provisions of Section 6 (d) (1) do not apply, but the landlord must observe the notice requirements of Section 6 (d) (2).

(Issued May 15, 1943.)

INTERPRETATION 6 (b) (2)—VIII. EVICTION FOR PURPOSE OTHER THAN HIS OWN OCCUPANCY, BY PURCHASER WHO BUYS AFTER OCTOBER 20, 1942.[1]

1. *Eviction prior to execution of sale contract.*—L is renting a house to T. On or after October 20, 1942,[1] L petitions for a certificate under

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

Section 6 (b) (1) of the Housing Regulation on the ground that he wants to evict T in order to sell the house.

The petition will be denied. Eviction of the tenant under these circumstances is inconsistent with the purposes of the Act and the Regulation and is likely to result in the circumvention or evasion thereof. The conditions under which eviction of a tenant is permitted for occupancy by a purchaser are set out in Section 6 (b) (2) of the Regulation. The purposes of this provision require the denial of the petition in the above case. Pursuant to those purposes, a certificate will be issued where L desires to sell the house, only after a contract of sale has been made and the requirements of Section 6 (b) (2) are satisfied.

2. *For purpose of resale.*—After October 20, 1942[1] L buys a house which is rented to T, paying 50% of the purchase price in cash. L is a real estate broker and buys the house for purposes of resale. He petitions for a certificate under Section 6 (b) in order to obtain vacant possession for purposes of sale.

The petition will be denied. As in paragraph 1, the issuance of the certificate is covered by Section 6 (b) (1) rather than Section 6 (b) (2), since the removal is not sought for occupancy by the purchaser. Even though the payment requirement of Section 6 (b) (2) is satisfied, as is true here, eviction of the tenant under these circumstances is inconsistent with the Act and the Regulation and would be likely to result in the circumvention or evasion thereof. The considerations set out in paragraph 1 apply.

3. *For occupancy by purchaser's family.*—After October 20, 1942,[1] L buys a house which is rented to T for occupancy by L's daughter, L paying 20% of the purchase price. L petitions for a certificate under Section 6 (b).

The petition will be denied. The issuance of the certificate in this case is covered by Section 6 (b) (1) rather than Section 6 (b) (2). The latter provision covers only the issuance of certificates where removal of the tenant is sought for "occupancy by a purchaser." However, the policies behind Section 6 (b) (2) apply to the present case, and the requirements of that section will be followed in the proceedings under Section 6 (b) (1). Since less than one-third of the purchase price has been paid, a certificate is not authorized.

(Issued January 9, 1943.)

INTERPRETATION 6 (b) (2)—IX. EVICTION BY PURCHASER WHO RENTS TO NEW TENANT AFTER SALE.

1. After October 20, 1942,[1] L buys a house which is then rented to X, paying 10% of the purchase price in cash and agreeing to pay the balance in monthly installments. Thereafter X voluntarily vacates and L rents the house to T on a month-to-month basis. After T has occupied the house for several months, L decides, in good faith, to occupy the house himself. He petitions for a certificate under Section 6 (b).

This case is not covered by Section 6 (b) (2) and the requirements of that provision, including the payment and waiting period requirements, are inapplicable. This was true prior to February 15, 1943, although the language of Section 6 (b) (2) at that time was not explicit

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

on the point. On that date, the result was made explicit in the language by Supplementary Amendment No. 14, which limited the scope of Section 6 (b) (2) "to removal or eviction of a *tenant of the vendor.*"

The proceeding is under Section 6 (b) (1) and a certificate will be issued provided L is acting in good faith. (L cannot evict under Section 6 (a) (6) since he neither owned nor had an enforceable right to buy or the right to possession of the house prior to October 20, 1942.)

2. After October 20, 1942,[1] L buys a house which is then occupied by the vendor, paying 10% of the purchase price in cash and agreeing to pay the balance in monthly installments. The sale is closed and title passes to L, but L agrees with the vendor that the latter may continue to occupy the house for three months, paying rent. The vendor refuses to vacate at the end of three months and L petitions for a certificate under Section 6 (b) on the ground that he wants to occupy the house himself.

As in paragraph 1 above, this is not a case covered by Section 6 (b) (2) and the requirements of that provision are inapplicable. The proceeding is under Section 6 (b) (1) and a certificate will be issued provided L is acting in good faith.

(Issued January 9, 1943; revised May 15, 1943.)

[Sec. 6. *Removal of tenant.*]

(c) *Exceptions fom section 6*—(1) *Subtenants.* The provisions of this section do not apply to a subtenant or other person who occupied under a rental agreement with the tenant, where removal or eviction of the subtenant or other such occupant is sought by the landlord of the tenant, unless under the local law there is a tenancy relationship between the landlord and the subtenant or other such occupant.

(2) *Housing subject to rent schedule of War or Navy Department.* The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

(3) *One or two occupants in landlord's residence.* The provisions of this section shall not apply to an occupant of a furnished room or rooms not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord rents to not more than two occupants within such residence.

INTERPRETATION 6 (c) (3)—I. MEANING OF "OCCUPANT" AND "RESIDENCE."

1. L is the owner of a single-family dwelling in which he resides. On November 1, 1942 L rented two furnished rooms to T at a rent of $12 a week. T immediately entered into occupancy with his wife and five-year-old son. On December 30, 1942, Section 6 (c) (3) was added to Section 6 of the Housing Regulation by Supplementary Amendment No. 13. L now seeks to evict T and his family.

The exemption of Section 6 (c) (3) does not apply, since the rooms contain three "occupants." Section 6 (c) (3) is limited to cases in

[1] In areas brought under control after October 20, 1942, the applicable date is the effective date of the Regulation.

which the landlord rents to not more than two "occupants" within the landlord's residence. The term "occupant" includes any person residing in the accommodations as a result of a rental agreement, even though such person may not be a party to the rental agreement or a "tenant" within the meaning of the Regulation.

The term "occupant" is to be distinguished from the term "paying tenant" as used in Section 13 (a) (12). In the case stated if L rents no furnished rooms other than those rented to T, the rooms are subject to the Housing Regulation, since they are rented to only a single "paying tenant."

2. L owns an apartment building containing 14 apartments and himself resides in one apartment consisting of 6 rooms. On November 15, 1942 L rents furnished, to T, one of the rooms in the apartment occupied by L. L continues to occupy the remaining five rooms in the apartment.

Section 6 (c) (3) applies as between L and T, even though in the remainder of the apartment building there are more than two "occupants" who occupy under rental agreements with L. L's apartment is his "residence" within the meaning of Section 6 (c) (3). The room rented to T is not an "apartment" within the exception of Section 6 (c) (3), since the room itself is assumed not to be a room or suite of rooms containing all the facilities (including kitchen facilities) necessary for a complete and self-contained dwelling unit.

Section 6 (c) (3) is not limited to rental agreements made after December 30, 1942, the effective date of Supplementary Amendment No. 13.

(Issued February 20, 1943.)

[Sec. 6. *Removal of tenant.*]

(d) *Notices required*—(1) *Notices prior to action to remove tenant.* Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is nonpayment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought and specifying the time when the tenant is required to surrender possession: *Provided, however,* That the requirement of this sentence shall not apply to housing accommodations within the City of Baltimore, Maryland, the Northeastern New Jersey Defense-Rental Area, or the Trenton

Defense-Rental Area, when the ground for the removal or eviction of a tenant is nonpayment of rent.

Where the ground for removal or eviction of a tenant is nonpayment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply where a certificate has been issued by the Administrator pursuant to the provisions of paragraph (b) of this section.

(2) *Notices at time of commencing action to remove tenant.* At the time of commencing any action to remove or evict a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the area rent office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

See: Application of notice provisions where eviction certificate issued: Interpretation 6 (b) (2)—VII, p. 87.

INTERPRETATION 6 (d)—I. EFFECT OF SECTION 6 (d) UPON PENDING ACTIONS.

1. (a) Assume that the effective date of the Housing Regulation was July 1, 1942. A court action to evict was commenced prior to October 20, 1942, the effective date of Supplementary Amendment No. 6, and was pending on that date. At the time of commencing the action L gave notice to the Area Rent Office in accordance with Section 6 (d) in its original form. The new provisions inserted in Section 6 (d) by the amendment do not apply to this action. The matter may proceed to judgment without giving the ten-day notices required by Section 6 (d) as amended. The notice provisions are procedural and do not affect pending actions. Substantive changes, on the other hand, do affect pending actions. Thus the amendment of Section 6 (a) (6) of the Housing Regulation, made by Supplementary Amendment No. 7 and also effective on October 20, is a substantive change and applies to pending actions. If, for example, an action is pending on October 20, 1942 to evict a tenant on the ground that the landlord wants the premises for occupancy by a member of his family, the court cannot thereafter order eviction on that ground. [See Interpretation 6—I.]

(b) The changes made in Section 6 (d) by Supplementary Amendment No. 6 are contained in the Housing Regulations which became effective on November 1, 1942, or thereafter. The effect upon actions pending on the effective date of the particular Regulations is the same as described above; that is, an action commenced before the effective date, and pending on that date, is not affected by the notice requirements of Section 6 (d). However, the substantive grounds for eviction provided in Section 6 must be present unless an order has already been entered prior to the effective date of the Regulation. [See Interpretation 6—I.]

2. (a) In the areas where the Housing Regulation became effective before October 20, 1942, the provisions of Section 6 (d) as amended, apply to actions commenced on or after that date. Prior to the commencement of any such action, the landlord must give the ten day notices required by Section 6 (d) (1). A notice already given

pursuant to local law would suffice provided that it met the requirements of the second and third paragraphs of Section 6 (d)(1). Assume, for example, that a landlord commences an eviction action on October 21, 1942. Thirty days prior to such commencement he gave a notice to vacate as required by local law. The notice set out the ground under Section 6 on which removal was sought and otherwise satisfied the requirements of Section 6 (d) (1), as amended. A copy of the notice was given to the Area Office at the time notice was given to the tenant. The provisions of Section 6 (d) (1) are satisfied and no further notice need be given. However, notice of the commencement of the action must be given under Section 6 (d) (2). If the above 30-day notice did not state the ground under Section 6, or failed in some other respect to meet the requirements of Section 6 (d) (1), new notices in conformity with that section must be given at least ten days prior to commencement of the action.

The provisions of the first paragraph of Section 6 (d) (1) do not apply to any notices given prior to October 20, 1942. That paragraph establishes certain requirements for "every notice to a tenant to vacate," and applies only to notices to vacate given on or after October 20.

(b) In areas where the Housing Regulation became effective on November 1, 1942, or thereafter, Section 6 (d) applies to actions commenced on or after the effective date of the Regulation in the manner described above.

(Issued October 21, 1942; revised May 15, 1943.)

INTERPRETATION 6 (d)—II. MAILING COPY OF NOTICE TO AREA OFFICE.

Section 6 (d) (1) of the Housing Regulation provides that a written copy of every notice to a tenant to vacate or surrender possession of housing accommodations "shall be given to the Area Rent Office within 24 hours after the notice is given to the tenant." The word "given" in this context includes a notice sent to the Area Office by mail. Under some circumstances it may not be possible for a mailed copy of the notice to reach the Area Office within 24 hours. It is not necessary that a mailed copy of the notice actually reach the Area Office within the 24-hour period. If a copy of the notice which reaches the Area Office was deposited in the mail within 24 hours after service on the tenant, this is sufficient to meet the requirement of Section 6 (d) (1).

(Issued January 20, 1943.)

INTERPRETATION 6 (d)—III. NOTICE WHERE EVICTION OF TENANT IS BASED UPON NON-PAYMENT OF RENT.

1. (a) L is renting a house to T for $30 a month, which is the maximum rent. T defaults in payment of rent and L proposes to bring a court action to evict T because of such default. Under the local law of the defense-rental area in which the house is situated, a landlord is required to give notice to a tenant at least five days before commencing an action to evict the tenant for non-payment of rent.

Prior to March 24, 1943, a landlord was required by Section 6 (d) (1) of the Housing Regulation to give written notices to the tenant and the Area Rent Office at least ten days before commencing an action to evict the tenant based on non-payment of rent. On and after that date, as a result of Supplementary Amendment No. 17, the period of

time required for the notices corresponds to that required by local law, except that the notices must be given at least three days before commencing the action. This is true only where the action to remove the tenant is based solely on non-payment of rent.

In the above case Section 6 (d) (1) of the Housing Regulation, as amended, requires L to give written notices of the proposed action to the tenant and the Area Rent Office at least five days prior to the commencement of the action, since that is the period of time required by the local law. These notices must state (1) that the eviction will be sought for non-payment of rent, (2) the rent which the landlord is charging for the housing accommodations, (3) the amount of rent due, (4) the rental period or periods for which the rent is due, and (5) the time when the tenant is required to surrender possession. The time specified for surrender of possession must be at least five days after the notices are given.

(b) L may not commence the action until at least five days has expired after the above notices are given. When the action is commenced, L must at that time give a further written notice to the Area Rent Office pursuant to Section 6 (d) (2) of the Housing Regulation.

2. Assume in the above case that the local law of the defense-rental area in which the house is situated does not require notice to the tenant prior to commencement of an action based on non-payment of rent. Under Section 6 (d) (1), as amended, written notices of the sort described in paragraph 1 (a) must be given at least three days prior to commencement of the action.[1] Furthermore, a written notice must be given to the Area Rent Office at the time the action is commenced pursuant to Section 6 (d) (2).

3. Assume in the case stated in paragraph 1 (a) that the landlord proposes to remove the tenant by exclusion from possession, without court action. Again, the removal of the tenant is based solely on non-payment of rent. Under Section 6 (d) (1) the landlord must give the written notices described in paragraph 1 (a) to the tenant and the Area Rent Office at least five days before he removes the tenant by exclusion from possession. However, the notice required by Section 6 (d) (2) need not be given, since that requirement applies only where a court action is brought to accomplish the eviction.

In the case stated in paragraph 2, the landlord is required to give the written notices at least three days prior to the time when the tenant is removed by exclusion from possession.

(Issued March 17, 1943.)

[Sec. 6. *Removal of tenant.*]

(e) *Local law.* No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

Sec. 7 *Registration*—(a) *Registration statement.* On or before the date specified in Schedule A of this regulation, or within 30 days after the property is first rented, whichever date is the

[1] This is not true in Baltimore City, which is a part of the Baltimore Defense-Rental Area, in the Trenton Defense-Rental Area, or in the Northeastern New Jersey Defense-Rental Area. In those areas, no notice prior to commencement of the action is required under Section 6 (d) (1) where the eviction is sought for non-payment of rent. However, a notice must be given at the time the action is commenced, under Section 6 (d) (2).

later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement, and shall obtain the tenant's signature and the date thereof, on the back of such statement. Within five days after renting to a new tenant, the landlord shall file a notice on the form provided therefor, on which he shall obtain the tenant's signature, stating that there has been a change in tenancy, that the stamped copy of the registration statement has been exhibited to the new tenant and that the rent for such accommodations is in conformity therewith.

When the maximum rent is changed by order of the Administrator, the landlord shall deliver his stamped copy of the registration statement to the Area Rent Office for appropriate action reflecting such change.

(b) *Receipt for amount paid.* No payment of rent need be made unless the landlord tenders a receipt for the amount to be paid.

(c) *Exceptions from registration requirements*—(1) *Housing under section 4 (g).* The provisions of this section shall not apply to housing accommodations under section 4 (g). The owner of such housing accommodations shall file a schedule or schedules, setting out the maximum rents for all such accommodations in the Defense-Rental Area and containing such other information as the Administrator shall require. A copy of such schedule or schedules shall be posted by the owner in a place where it will be available for inspection by the tenants of such housing accommodations.

(2) *Housing subject to rent schedule of War or Navy Department.* The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including any civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

(3) *Housing in Cincinnati Defense-Rental Area.* The provisions of this section shall not apply to housing accommodations in the Cincinnati Defense-Rental Area so long as the maximum rent for such accommodations is established solely under paragraph (a) or (b) of section 4: *Provided, however,* That no payment of rent need be made by any tenant of such accommodations unless the landlord tenders a receipt for the amount to be paid.

INTERPRETATION 7—I. WHETHER LANDLORD OR HIS AGENT SHOULD SIGN REGISTRATION STATEMENT.

Where rental property is handled by a managing agent on behalf of the owner, the registration statement must be signed by the owner

in his own name rather than by the agent as landlord, unless the agent appears in the lease as lessor. In the latter situation, the agent should sign the registration statement as landlord.

(Issued May 15, 1943.)

Sec. 8 *Inspection.* Any person who rents or offers for rent or acts as a broker or agent for the rental of housing accommodations and any tenant shall permit such inspection of the accommodations by the Administrator as he may, from time to time, require.

Sec. 9 *Evasion.* The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase, or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing accommodations, or otherwise.

Sec. 10 *Enforcement.* Persons violating any provision of this regulation are subject to criminal penalties, civil enforcement actions and suits for treble damages as provided for by the Act.

Sec. 11 *Procedure.* All registration statements, reports and notices provided for by this regulation shall be filed with the area rent office. All landlord's petitions and tenant's applications shall be filed with such office in accordance with Revised Procedural Regulation No. 3 (§§ 1300.201 to 1300.253, inclusive).

Sec. 12 *Petitions for amendment.* Persons seeking any amendment of general applicability to any provision of this regulation may file petitions therefor in accordance with Revised Procedural Regulation No. 3 (§§ 1300.201 to 1300.253, inclusive).

Sec. 13 *Definitions.* (a) When used in this regulation the term:

(1) "Act" means the Emergency Price Control Act of 1942.

(2) "Administrator" means the Price Administrator of the Office of Price Administration, or the Rent Director or such other person or persons as the Administrator may appoint or designate to carry out any of the duties delegated to him by the Act.

(3) "Rent Director" means the person designated by the Administrator as director of the Defense-Rental Area or such person or persons as may be designated to carry out any of the duties delegated to the Rent Director by the Administrator.

(4) "Area rent office" means the office of the Rent Director in the defense-rental area.

(5) "Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(6) "Housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling

purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property.

See: Furniture "connected with use or occupancy": Interpretation 1 (a)—V, p. 4.

(7) "Services" includes repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, telephone, elevator service, window shades, and storage, kitchen, bath, and laundry facilities and privileges, maid service, linen service, janitor service, the removal of refuse and any other privilege or facility connected with the use or occupancy of housing accommodations.

INTERPRETATION 13 (a) (7)—I. FURNITURE NOT INCLUDED IN DEFINITION OF SERVICES.

The term "services" does not include furniture. However, by Supplementary Amendments No. 10 and No. 6A, effective December 1, 1942, the Housing and Hotel Regulations which were then in effect were amended so as to include furniture, as well as furnishings and equipment, in the requirements of Sections 3 and 5 (b). These changes have been included in all Regulations effective on December 1, 1942 or thereafter.

In an area where the Regulation became effective on or before December 1, 1942, removal on or after that date of furniture which was provided on the date determining the maximum rent is subject to the same tests as a decrease in services. Where the furniture is "essential" or where, though not essential, the decrease in furniture will be substantial, the Regulation prohibits removal of the furniture unless and until an order is entered, on the landlord's petition under Section 5 (b) (2), permitting the removal. As to furniture removed before December 1, 1942, Section 5 (b) (1) provides that the landlord shall file a written report showing the decrease within 30 days after December 1, 1942.

In an area where the Regulation became effective after December 1, 1942, the decisive date is the effective date of the Regulation, rather than December 1, 1942. If, for example, the Regulation became effective on January 1, 1943, the landlord may not on or after that date remove furniture which was provided on the date determining the maximum rent except pursuant to permission given under Section 5 (b) (2). Where the furniture was removed before the effective date of the Regulation, the landlord is required to report this fact within 30 days after effective date.

(Issued August 15, 1942; revised May 15, 1943.)

[Sec. 13. *Definitions.* (a) When used in this regulation the term:]

(8) "Landlord" includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodations, or an agent of any of the foregoing.

(9) "Tenant" includes a subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodations.

(10) "Rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received for the use or occupancy of housing accommodations or for the transfer of a lease of such accommodations.

(11) "Hotel" means any establishment generally recognized as such in its community, containing more than 50 rooms and used predominantly for transient occupancy.

(12) "Rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short-time basis of daily, weekly, or monthly occupany to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

(b) Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942 shall apply to other terms used in this regulation.

APPENDIX TO INTERPRETATIONS

Included in the Appendix are certain Interpretations originally issued concerning the first paragraph of Section 5 (e) of the Housing Regulation, as that paragraph appeared in Regulations issued prior to March 1, 1943. By Supplementary Amendment No. 15 (effective March 1, 1943), that paragraph was revoked. However, the new Section 4 (i) which was introduced by that amendment fixes as the maximum rent the rent on March 1, 1943, where the maximum rent for the accommodations in question had been established prior to March 1, 1943 under Section 5 (e) in its original form. In some situations, therefore, the effect of the former provisions will still be relevant and the following interpretations are for that reason retained in an Appendix. They are all concerned with subletting situations and are referred to as SL, with appropriate Roman numerals.

The first paragraph of Section 5 (e) in its original form provided as follows:

> Where, at the expiration or other termination of an underlying lease or other rental agreement, housing accommodations or a predominant part thereof are occupied by one or more subtenants or other persons occupying under a rental agreement with the tenant the landlord may rent the entire premises for use by similar occupancy for a rent not in excess of the aggregate maximum rents of the separate dwelling units, or may rent the separate dwelling units for rents not in excess of the maximum rents applicable to such units.

INTERPRETATION SL—I. APPLICATION OF FORMER SECTION 5 (e) WHERE UNDERLYING LEASE RENEWED PRIOR TO EFFECTIVE DATE.

Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On February 1, 1941, L leases to T for one year a ten-room house at a monthly rent of $75, T having the right to sublease. T conducts a rooming house and at the expiration of the lease on February 1, 1942 the ten rooms are occupied by subtenants. The aggregate maximum monthly rents of the separate dwelling units amount to $175. On February 1, 1942, prior to the effective date of the Regulation, L and T renew the lease for another year at a monthly rental of $100, the tenant retaining the right to sublease.

The landlord may continue to charge $100 until the expiration of the lease on January 31, 1943. In a case where, at the expiration or other termination of a lease or other rental agreement, the premises or a predominant part thereof were occupied by one or more subtenants, Section 5 (e), prior to Supplementary Amendment No. 15 (effective March 1, 1943), permitted the owner to rent the premises at a rent not in excess of the aggregate maximum rents of the separate dwelling units, provided the premises were to be used for similar occupancy. The provisions of Section 5 (e) were applicable whether the lease was renewed before or after the effective date of the Regulation. It was not necessary for the landlord to file a petition for adjustment. Where the maximum rent was established prior to March 1, 1943 under the first paragraph of Section 5 (e) as it existed prior to that date, the rent on March 1, 1943 as fixed by such renting will determine the maximum rent under Section 4 (i), which was introduced by Supplementary Amendment No. 15.

(Issued June 29, 1942; revised May 15, 1943.)

INTERPRETATION SL—II. CONDITIONS FOR APPLICATION OF SECTION 5 (e) OF THE HOUSING REGULATION (PRIOR TO AMENDMENT OF MARCH 1, 1943).

1. Assume the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942. On April 1, 1941 L owned a twelve-room house which was leased to A unfurnished at a monthly rent of $50, under a lease for one year which expired on February 1, 1942. At the expiration of the lease on February 1, 1942, L rented the building to B unfurnished under an oral agreement for a month-to-month tenancy at a rent of $75 a month. L and B orally agreed that B could operate the building as a rooming house. B proceeded to rent seven of the twelve rooms as furnished rooms on a weekly basis, and occupied the remaining five rooms himself. B supplied heat, light and other services for the rooms which were sublet. On July 15, 1942 L served B with a notice that the rental agreement between them would terminate on July 31, 1942, such notice being in conformity with the requirements of local law by which 15 days' notice was sufficient to terminate a month-to-month tenancy. On July 31, 1942 B removed all the furniture in the building and proceeded to vacate. On July 31, 1942 the aggregate of the maximum rents of the rooms rented to roomers was $70 a month. L then desired to rent the entire structure to a new tenant, C, at a rent of $80 a month, with an agreement that C might operate the structure as a rooming house.

If the premises were predominantly occupied by sub-tenants on the expiration of B's lease, L could rent the premises to C for a rent "not in excess of the aggregate maximum rents of the separate dwelling units." In determining whether the premises were predominantly occupied by sub-tenants, the decisive test was the space used by them for living and dwelling purposes, rather than the number of rooms or dwelling units. In discussing additional problems involved in the above fact situation, it will be assumed that on July 31, 1942 the space in the structure was predominantly occupied by sub-tenants.

For the application of Section 5 (e) it was required that there be an "expiration or other termination" of the underlying lease or rental agreement. The tests for determining whether a month-to-month

tenancy had expired or terminated were the tests of local state law. Ordinarily it can be assumed that a month-to-month tenancy does not automatically terminate at the end of each rental period and that some notice was required of the type referred to in the case above stated.

The maximum rent that L might charge C was not limited to $50, the rent in effect on the maximum rent date. On the expiration of B's lease on July 31, 1942 L could rent the entire premises "for use by similar occupancy" for a rent not in excess of the aggregate maximum rents of the separate dwelling units, and it was not necessary to petition for an adjustment for this purpose [Interpretation SL—I]. Furthermore, the aggregate maximum rents of the separate dwelling units included the maximum rent of the five rooms occupied by B at the expiration of his rental agreement. Since these five rooms had never been rented as a dwelling unit during the period within which maximum rents are determined, the rent which L could charge C was influenced by an unknown fact which the Area Rent Director could determine under Section 5 (d) by fixing a maximum rent for the 5 rooms. The result might be that L might demand a rent which would make the operation of the structure as a rooming house unprofitable to C. However, where the conditions of Section 5 (e) were satisfied it was assumed that the rent to be paid by the tenant (as distinguished from the rents payable by the occupants of the rooms) would be fixed by processes of bargaining for mutual advantage.

In order to satisfy the requirement that L rent "for use by similar occupancy," it was sufficient that, under the lease or other rental agreement made between L and the new tenant C, the latter be given the right to sublet or take in roomers to at least the same extent that there were subtenants or roomers on expiration of B's lease.

If L rented to C it was not necessary for L to supply the furniture for the rooms, nor the minimum service applicable to such rooms. These minimum services became the obligation of the new tenant C. L's obligation was to supply the minimum services in connection with the rental of the entire house.

2. Assume in the case stated in paragraph 1 that, when B's rental agreement ended, five of the twelve rooms, constituting less than half of the space, were rented to roomers. However, the roomers were given the privilege of using B's living room and kitchen along with B.

The premises were not predominantly occupied by subtenants or roomers, and Section 5 (e) did not apply. The use by the roomers of the living room and kitchen in common with B was not "occupancy" under a rental agreement with B within the meaning of 5 (e), and thus this use was disregarded in determining predominant use.

3. Assume in the case stated in paragraph 1 that, without proceeding under Section 5 (d), L determined that the maximum rent for the five rooms which B was occupying at the expiration of his lease was $20, thus that the maximum rent for the entire structure was $90. L then rented the house to C for $80 a month and collected that amount for several months. Thereafter the Rent Director initiated proceedings under Section 5 (d) and determined that the maximum rent for the five rooms was $15 and thus that the maximum rent for the entire structure was $85.00.

The Rent Director's order determined the maximum rent as of the time when B's lease expired, and L was not in violation of the Regula-

tion. However, had L rented to C for $90 he would be in violation of the Regulation, since he demanded and received rent in excess of the maximum.

In the proceeding under Section 5 (d) the Rent Director should fix the maximum rent for the five rooms on the basis of comparability.

(Issued August 25, 1942; revised May 15, 1943.)

INTERPRETATION SL—III. REQUIREMENT OF "TERMINATION" OF LEASE UNDER FORMER SECTION 5 (e).

Assume that the maximum rent date is March 1, 1942 and the effective date of the Regulation is July 1, 1942. On March 1, 1942 a ten-room house was leased to A, who occupied the entire premises himself, for a rent of $50 a month. On August 1, 1942 this lease expired and a six-month lease was made with T for a rent of $80 a month. It was agreed that T might use the structure for a rooming house. Immediately after execution of this lease T occupied three rooms of the house and rented the remaining seven rooms, constituting a predominant part of the structure, to subtenants. The maximum rents of these seven rooms totalled $90.

The maximum rent for the house is $50 a month. The provision in the lease between L and T for a rent of $80 a month was in violation of the Regulation. The first paragraph of Section 5 (e) of the Housing Regulation (as it existed prior to March 1, 1943) was not applicable. That paragraph applied only where a predominant part of the premises was occupied by subtenants at the *termination* of a lease. In this case a predominant part of the premises was not occupied by subtenants when A's lease expired.

The landlord may however file a petition for adjustment under Section 5 (a) (8) if there has been a substantial increase in the number of sub-tenants.

(Issued August 27, 1942; revised May 15, 1943.)

INTERPRETATION SL—IV. EXPIRATION OF LEASE WITH PREMISES NOT PREDOMINANTLY OCCUPIED BY SUBTENANTS.

Assume in each of the following cases that the maximum rent date is March 1, 1942 and the effective date of the Housing and Hotel Regulations is July 1, 1942.

1. On August 1, 1941 L leased a rooming house to T for one year at a rent of $75 a month. When this lease expired on July 31, 1942 all rooms in the house were occupied by roomers. The maximum rents of the rooms totaled $150 a month. On expiration of the lease L rented the rooming house to T on a month-to-month basis for $110 a month. This was within the maximum rent established under Section 5 (e) of the Housing Regulation as it appeared in the Regulation prior to amendment on March 1, 1943. By August 15 all the roomers had moved out and T thereupon moved in and occupied the entire structure himself. By proper notice T terminated the month-to-month tenancy effective on October 1, 1942, and on that date T vacated the premises.

The maximum rent for the house on October 1, 1942 was $75 a month, the rent on March 1, 1942. When the lease expired on July 31, 1942 a maximum rent of $150 was established under Section 5 (e). This maximum rent continued during the period of the new rental agreement made between L and T on August 1, 1942. When this new rental agreement expired, L's right under the Regulation to receive a higher rent than the March 1, 1942 rent depended upon whether the conditions set out in Section 5 (e) (as it existed prior to March 1, 1943) were again present. When the new rental agreement expired no part of the premises was occupied by subtenants and therefore Section 5 (e) was inapplicable. Thus the maximum rent reverted to the March 1, 1942 level.

2. In paragraph 1 it is stated that the maximum rent established under Section 5 (e) on termination of the underlying lease on July 31, 1942 continued during the period of the new lease or other rental agreement. This statement is subject to one qualification. Assume in the case stated in paragraph 1 that, on August 15, 1942, the Rent Director decreased the maximum rents of the rooms within the house to a total of $100, under the authority given by Section 5 (c) (1) of the Hotel Regulation. This action automatically decreased the maximum rent for the entire structure to $100.

(Issued October 26, 1942; revised May 15, 1943.)

INTERPRETATION SL—V. APPLICATION OF FORMER SECTION 5 (e) WHERE PREMISES SUBLET FURNISHED.

[This Interpretation involves the same fact situation as in Interpretation 4 (a)—III, with the addition of a comment concerning the application of the former Section 5 (e).]

Assume in each of the following cases that the maximum rent date is April 1, 1941 and the effective date of the Regulation is June 1, 1942.

1. On April 1, 1941 L is renting a furnished house to T for $40 a month. On February 1, 1942 T sublets to S for $60 a month. On August 1, 1942 T's lease terminates.

The maximum rent for the furnished house is $40 a month, both as between L and T and as between T and S. On and after June 1, 1942 T is entitled to demand and receive only $40 a month from S [Interpretation 4 (a)—II, paragraph 2]. On expiration of T's lease Section 5 (e) as it existed prior to Supplementary Amendment No. 15 (effective March 1, 1943) applied, since the house was then wholly occupied by a subtenant. However, Section 5 (e) did not affect the amount of the maximum rent. That section permitted L to rent "the entire premises" for a rent "not in excess of the aggregate maximum rents of the separate dwelling units." Here the only dwelling unit is the "entire premises" and the only maximum rent to be considered is the maximum rent for such premises, i. e., $40 a month.

2. On April 1, 1941 L is renting a house to T unfurnished for $25 a month. On February 1, 1942 T sublets to S furnished for $40 a month. On August 1, 1942 T's lease terminates.

The maximum rent for the house unfurnished is $25 a month, and for the house furnished is $40 a month. The language of Section 5 (e) as it existed prior to Supplementary Amendment No. 15 (effective March 1, 1943), applied, since at the expiration of T's lease the house was wholly occupied by a subtenant. However Section 5 (e) did not result in an increase in the maximum rent for the house unfurnished. Under that section, prior to its elimination by Supplementary Amendment No. 15 (effective March 1, 1943) L could rent the house to T for a rent not in excess of the aggregate maximum rents of the sep-

arate dwelling units. In this instance the only dwelling unit rented is the entire house and the maximum rent to be considered is the rent for the entire house. Moreover, if L rented the house to T unfurnished the maximum rent to be considered for the purposes of Section 5 (e) was that for the house unfurnished, to wit, $25 a month.

L might, however, rent the house furnished to S or any other tenant for $40 a month, since that is the maximum rent established under Section 4 (d). This rent is subject to decrease under the provisions of that section and Section 5 (c) (1) if it is higher than "comparable rents" on April 1, 1941.

(Issued November 14, 1942; revised May 15, 1943.)

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